United States Court of Appeals

for the Second Circuit

APPENDIX

76-2172

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PLEASE RETURN TO
RECORDS ROOM

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA
EFRAIN SANTIAGO,

Petitioner-Appellee,

-against-

LEON VINCENT, Superintendent of
Green Haven Correctional Facility,

Respondent-Appellant.

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APPENDIX

UNITED STATES COURT OF APPEALS
FILED
OCT 18 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

Form No. 106 Rev.

Recd 75-3221 | TITLE OF CASE: 07-CIV-75 | 530 | 1

UNITED STATES OF AMERICA
ex rel.
[illegible]

-vs-

WILLIAM, WOLF - Superintendent of
GREEN HAVEN CORR. CENTRAL FACILITY

ATTORNEYS

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STATISTICAL RECORD	COSTS			DATE	NAME OR RECEIPT NO.	REC.	DISB.
5 mailed	Clerk						
6 mailed	Marshal						
of Action: Petition for	Docket fee						
	Witness fees						
	Depositions						

75-3225 Judge Cagliardi U.S.A. ex rel. Efrain Santiago -vs- Leon Vincen

DATE	PROCEEDINGS
07-01-75	(1) Filed Petition for writ of habeas corpus.
07-02-75	(2) Filed ORDER TO SHOW CAUSE re: writ of habeas corpus ret: 7-2-75 ,etc. Gagliardi,J.
07-02-75	(3) Filed Petitioner's memo. of law.
07-01-75	(4) Filed [illegible] Memo. of law.
07-15-75	[illegible]
07-17-75	PRE-TRIAL CONFERENCE HELD [illegible]
6-75	[illegible] memo. of law re: further info regarding [illegible]
12-3-76	(7) Filed order that writ should be issued unless State of N.Y. vacates the judgment of conviction and accords him a new trial within 60 days of the issuance of the mandate herein.Gagliardi
12-17-76	(8) Filed petitioner's affdvt. in opposition to respondent's application for a stay of order of this Court issued on November 30, 1976.
12-17-76	(9) Filed Memo. Endorsement on motion of 12/13/76.Motion for stay of this court's order is granted pending determination by 2nd Circuit of appellate appeal. Accordingly, (6) days period within which petitioner must be released or retried shall commence as of date of division of 2nd Circuit.So Ordered.Gagliardi,J
12-20-76	(10) Filed Respondent's Notice of Appeal from an order of U.S.D.C.,SDNY dated 11/30/76 which granted petitioner's application for writ of habeas corpus,etc. (mailed copy to Hon.L.Kaufman,W.J.Gallagher on 12/20/76)
12/21/76	Filed affidavit of Rhonda Bayer in opposition to Petitioner's application for writ of habeas corpus.
12/22/76	Filed memorandum of law in opposition to petitioner's application for writ of habeas corpus.
12/27/76	Filed petitioner's reply to respondent's supplemental memorandum of l
12/27/76	Filed petitioner's supplemental memorandum of law
01-04-77	Fld Notice that original record has been certified and transmitted t USCA.
03-22-77	Fld true copy of USCA,2nd Circuit dated 2/22/77 that judgment is affirmed,Feinberg, Oakes,Meskill,USCJ's [illegible] m/n mt.3/23/77
3-25-77	Fld true copy of USCA Order granting appellant's motion recalling mandate,extending time to file petition for rehearing and filing of briefs.m/n to appel
5-2-77	Fld deft's Notice of Motion ret. on June 16, 1977, re: for order reopening the case for the purpose of presenting additional evidence.
6-9-77	Fld true copy of order from the U.S.C.A, re: ordered that the appellant's petition for rehearing is granted; the order dtd Feb. 22, 1977, which affirmed the jugment district court, is withdrawn without prejudice to the appeal; the case is remanded immediately to the district court on the conditions indicated,Clerk, m/a
6-20-77	Filed Order to Show Cause to Compel Discovery..So Ordered.Gagliardi.J. Ret. June 21, 1977 at 10:00 a.m. in Room 2603.
6-22-77	Filed Petitioner's Affdvt. for W/H/C ad testificandum directing the Super. of Green Haven Corr. Fac., to produce him. Writ Issued. Ret. 6-23-77.
6-23-77	Hearing Before Cagliardi,J.
6-23-77	Hearing contd & concluded.Judge's Decision reserved.
7-01-77	Filed Petitioner's Writ of Habeas Corpus Ad Testificandum,with Marshal's return.Recd writ on 6/22/77 and served a certified copy on Warden of Greenhaven Corr.Facility&did pick up and deliver to MCC ,MC one Frain Santiago.Writ Satisfied.
07-06-77	Filed CJA 20-Authorization For Translator for Defense Witness by Gladys Mato .
07-06-77	Filed CJA 21 Authorization for payment of Translator Gladys Mato fo Defense Witness.
07-06	[illegible]

2a

PLAINTIFF	DEFENDANT	DOCKET NO. 75-3225
Santiago	Leon Vincent	PAGE 3 OF ___ PAGES

DATE	NR.	PROCEEDINGS
11-77		Filed Petitioner's post-hearing memo. of law.
601-77		Filed CJA 21 appointment of Interpreter,etc.Gladys Matos,64-36 65 Lane,Maspeth,NY11379 ,Tel:456-2066 for defense Witness Benjamin' Perez .Gagliardi,J. Issued all copies.
601-77		Filed CJA 21 approval of appointment of Interpreter,Gladys Matos . Gagliardi,J . Issued all copies.
8-31-77		Filed transcript of record of proceedings, dated 6-23-77
9-13-77		Filed OPINION#46328. .The Court,finding that there was a good faith basis for the searching cross-exam of Mildred Crespo and that her cross-exam was unconstitutionally restricted,orders the issuance of a writ of h/c under terms of its prior decision.Gagliardi,J. m/n
9-19-77		Filed Respondent's Notice of Appeal from order of Court dated 9/12/77,granting petitioner's application for writ of h/c and from each and every part of the order. m/n
9-[illegible]-77		Filed order. Case entered 9/13/77 is stayed pending disposition of respondent's appeal to USCA, 2nd Circuit Gagliardi,J. m/n
10-4-77		Filed respondent's post-hearing memo of law
10-4-77		Filed transcript of record of proceedings dated, June 23, 1977
10-4-77		Filed transcript of record of proceedings dated, June 29, 1977
10/17/77		Filed Stipulation to include copy of transcript of hearing dated July 9, 1977 and exhibit at hearing as part of the record on appeal

DC-111A REV. (1/75)

C 3a

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

THE UNITED STATES OF AMERICA ex rel. EFRAIN SANTIAGO,

Petitioner,

-against-

LEON VINCENT, Superintendent of Green Haven Correctional Facility,

Respondent.

- -x

75 Civ. 3225

OPINION

A P P E A R A N C E S:

RECEIVED
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SEP 15 1977
DEPARTMENT OF LAW
NEW YORK CITY OFFICE

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GAGLIARDI, D.J.

This is a petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254. This court rendered a decision on November 30, 1976 directing the issuance of a writ of habeas corpus unless the petitioner were retried within sixty days. United States ex rel. Santiago v. Vincent, 423 F. Supp. 103 (S.D.N.Y. 1976). The Second Circuit Court of Appeals affirmed on the decision below on February 22, 1977. Upon the State's petition for a rehearing, the Court of Appeals, in an order dated June 6, 1977, withdrew its affirmance without prejudice and remanded the matter to the district court to reopen the habeas corpus hearing upon the application of the State for the purpose of presenting additional evidence.

Pursuant to the State's application following the Court of Appeals remand, this court held an evidentiary hearing on June 23, 1977 to consider the State's offer of additional evidence. The State called Detective Neil Hughes and Mildred and Myrna Crespo as witnesses. The petitioner called Howard Getz, the attorney representing Santiago at his state trial, and Carmen Simeonides, Mr. Getz's secretary, as rebuttal witnesses. Pursuant to the suggestion of the court, the hearing was reopened on June 29, 1977 for the State to present the testimony of Isabel Alvarez. Thereafter, at petitioner's request, the hearing was again reopened

on July 6, 1977 to present the testimony of Benjamin Perez, Isabel Alvarez's common law husband.[1] The court, having heard the testimony of these witnesses at the hearings as mandated by the Court of Appeals, reaffirms its original decision.

The sole issue in this petition is whether the trial court's refusal to allow cross-examination of Mildred Crespo, a key prosecution witness, on the subject of her interest in the case deprived petitioner of his right of confrontation guaranteed by the Sixth and Fourteenth Amendments. Davis v. Alaska, 415 U.S. 308 (1974). As a result, the key question requiring this court to reopen the hearing is whether in fact there was any good faith basis for inquiring into Mildred Crespo's possible bias or motive to falsify her testimony because of her thinking that her brother had been arrested or was a suspect in the investigation of the murder in question.[2]

The testimony at the state court trial and the hearing before this court ("the habeas corpus hearing"),[3] while not always consistent, sufficiently establishes that there was a good faith basis for believing, first, that Mildred Crespo may have thought that her brother had been arrested or was a suspect in the murder investigation and, second, that this belief existed at the time she first came forward and told the police that she could identify the assailant as a man who at a later photo identification she

claimed was Santiago. The timing and circumstances of these events establish a possible motive for Mildred Crespo to falsify the identification she gave to the police to exculpate her brother.

The court's determination as to Mildred Crespo's possible state of mind is based primarily on her testimony and the testimony of Isabel Alvarez and Benjamin Perez at the habeas corpus hearing. Mildred's own testimony at the habeas corpus hearing was that she never thought her brother was a suspect in the case and had never discussed with anyone or was told of his involvement in the murder [H. 74-78]. However, her testimony throughout the hearing was contradictory and unconvincing. She did indicate concern about her brother's possible involvement when she testified that she knew her brother had spoken with Detective Hughes but did not know what they had discussed [H. 75], and when in response to a question about whether her brother ever talked to her about his going down to the stationhouse, she answered, "No, he would never talk to me about his problems." [H. 111].

The habeas corpus hearing testimony of Isabel Alvarez, whose testimony at the Wade hearing established the good faith basis for the cross-examination of Mildred Crespo at trial, more firmly establishes Mildred's possible belief that the police thought her brother was involved in the murder. Alvarez at the habeas corpus hearing confirmed her Wade hearing testimony by again testifying that Peewee Crespo had been

arrested for the murder in the early morning of December 17th [H. 122-124].[4] She further stated that she told Mildred Crespo that day that her brother had been arrested and they talked about his arrest. The credibility of Alvarez's testimony was supported by the testimony of Benjamin Perez at the hearing. Perez testified that Peewee had been arrested that morning because of the death in the building. He also testified that he spoke to Mildred Crespo on the morning of December 17th, and she told him that the police had arrested Peewee and beaten him [Hearing of Perez, July 6, 1977 at 3-4]. Although Alvarez later indicated that the arrest of Peewee took place two days later, her testimony and that of all the witnesses at the hearing along with the trial testimony indicates a sufficient likelihood that Mildred Crespo believed in the early morning of December 17th that her brother was arrested or was a suspect in the murder.

Mildred Crespo's belief then, that her brother was a suspect, preceded the time she first told the police that she could identify the assailant. The testimony establishes that Mildred Crespo did not tell the detectives who came to her apartment a few hours after the 12:15 a.m. murder on December 17, 1971[5] to interview Isabel Alvarez that she too had seen the assailant. Instead, according to her trial testimony [T. 209, 236, 726-28], she waited until the afternoon of December 17th to describe the assailant to the police and tell what she saw of the murder.[6] At the habeas corpus

hearing, on direct examination, she testified that she told the detective what she had seen when he first came to her apartment [H. 58], but on cross-examination she stated that she could not remember when she told this to the police [H. 63-65].[7] Detective Hughes' testimony on this point is contradictory.[8] At the Wade hearing he said he spoke to both Crespo sisters when he first visited their apartment a few hours after the murder [T. 94-95, 113], but at the trial he could not recall if they were in their apartment when he first visited it [T. 763-64]. Furthermore, at the habeas corpus hearing he stated that that morning only one sister, without identifying which one, had said she had seen the murder and could identify the assailant [H. 13].

Taking all this evidence into consideration, the court concludes that because of Mildred's possible state of mind at the time she first told the police that she had seen the murderer, petitioner has a good faith basis for carrying out extensive cross-examination on the issue of her bias or motive to testify falsely.[9]

The Supreme Court in Davis v. Alaska, supra, 316-17, citing Greene v. McElroy, 360 U.S. 474, 496 (1959), recognized that "the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination." The Court discussed the strategy of a general attack on the credibility of a witness by evidence of prior criminal convictions and

then stated:

> A more particular attack on the witness' credibility is effected by means of cross-examination directed toward revealing possible biases, prejudices, or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand. Davis v. Alaska, supra, at 316.

In this case a probing and thorough cross-examination of Mildred Crespo should have been permitted to fully develop her possible bias, because this was an example of a more particular attack relating directly to issues and personalities in the case at hand. Accord, United States v. Garrett, 542 F.2d 23, 26-27 (6th Cir. 1976).

The court, finding that there was a good faith basis for the searching cross-examination of Mildred Crespo and that her cross-examination was unconstitutionally restricted, orders the issuance of a writ of habeas corpus under the terms of its prior decision.[10]

So Ordered.

/s/
U.S.D.J.

Dated: New York, New York
September 12, 1977.

FOOTNOTES

1. Mildred Crespo, Isabel Alvarez and Benjamin Perez were questioned and testified through an interpreter.

2. Whether Mildred's brother, Peewee Crespo, had ever actually been arrested for the murder is not the issue in this case. Rather, it is Mildred's state of mind and her belief, whether or not true, that her brother had been arrested or was a suspect that would have been the basis for her bias and motive to testify falsely. Since Detective Hughes' testimony that to his knowledge Peewee was never arrested and was never a suspect and the testimony of Mr. Getz, Santiago's attorney, that he never found out if Santiago was actually arrested, does not affect Mildred Crespo's state of mind, such testimony is not evidence in favor of precluding inquiry into Mildred's possible bias. As in Davis v. Alaska, supra at 311, where the crucial prosecution witness may have had a belief that he was a suspect or that his probation might be revoked, the fact that those beliefs might have been erroneous did not diminish his possible bias or prejudice. See also Azbill v. Pogue, 534 F.2d 195, 196 n. 2 (9th Cir.), cert. denied, 429 U.S. 895 (1976).

3. [T.] refers to the page of the transcript of the state criminal proceeding against Santiago. [H.] refers to the page in the transcript of the habeas corpus hearing in this court.

4. CROSS-EXAMINATION BY MR. BASSIS [Attorney for Santiago]:

Q. Some time after you spoke to the police the first time your husband came home at 4:00 a.m., correct?
A. [Isabel Alvarez] Yes.
Q. Who came home with him at that time?
A. Crespo.
Q. What was his whole name, Custodio?
A. Custodio [Peewee] Crespo.
Q. Did they tell you that they had been arrested by the police for the murder?
A. Yes.
Q. They told you that the police thought they had committed the murder?
MS. SILVERMAN [Assistant Attorney General]: Objection.
THE COURT: Overruled.
A. Yes.
Q. Where did Peewee go after he left your apartment?
MS. SILVERMAN: Objection. There is no testimony he was in her apartment.

MR. BASSIS: She said they came home together.
THE COURT: Ask the question.
Where was it that your husband and Custodio Crespo saw you.
THE WITNESS: In my apartment.
Q. And that was at 4:00 a.m.?
A. Yes, when my husband returned.
Q. And do you know where Peewee Crespo went when he left your apartment?
A. He went to his sisters' house.
Q. Did you talk to his sisters later that day?
A. Yes, we talked every day. I knew them.
Q. Did they know about the arrest of their brother?
THE COURT: Did you talk to them about the arrest of their brother?
THE WITNESS: Yes, we talked.
THE COURT: Did you tell Mildred that her brother had been arrested?
THE WITNESS: Yes.

* * *

Q. Did Mildred tell you how the police treated her brother?
A. Yes, they had beaten him. They had beaten them both.

5. The testimony reflects some confusion about the timing of events. Because the murder occurred shortly after midnight, several of the witnesses when they identified an event as occurring on the day after the murder appeared to be talking about the same day, December 17th.

6. Mildred's sister, Myrna Crespo, also in the apartment the detectives visited a few hours after the murder, similarly did not tell her story until later that day. Myrna had the same motive as Mildred in exculpating her brother.

7. Myrna Crespo's testimony at the trial and the hearing on this point is consistent. She did not tell the police that she saw the murder when they came to her apartment that night but instead gave a description later that day or the next day [T. 267, 655-56; H. 84-85].

8. Detective Hughes testified that the case folder along with his detective's notebook on the case was missing from the police department's files. His own testimony on many of the issues raised at the trial and at the hearing, without notes to identify meetings and what was said, was often unclear or contradictory.

9. The testimony indicated another theory to show that Mildred Crespo, prior to her talking to the police about the murder, may have had a reason to believe that her brother was a suspect or had been arrested for the murder. The hearing testimony of Detective Hughes, while contradictory, indicated that Benjamin Perez and Peewee Crespo came down or were brought down to the stationhouse at about 11:00 a.m. on December 17th [H. 16, 33-34]. Detective Hughes testified that this was for routine questioning, and even if this were true, there is no indication that Mildred Crespo knew it was routine. In fact, her state of mind, as already indicated supra, may have been to the contrary when she associated Peewee's going down to the stationhouse with "his problems." If Mildred thought that her brother, because he was at the stationhouse, had been arrested or was a suspect, she would have had a motive to falsify the description of the murder that she gave to the police on the afternoon of December 17th.

10. The court notes that despite the state's concern as expressed to the Court of Appeals a new trial of Efrain Santiago is certainly a possibility, the state having located Mildred and Myrna Crespo and Isabel Alvarez, the three key witnesses in the original prosecution.

jh:mg

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA ex rel. EFRAIN SANTIAGO,

Plaintiff,

v. 75 Civ. 3225

LEON VINCENT, Superintendent of Greenhaven Correctional Facility,

Defendant.

- - - - - - - - - - - - - - - - - - - -x

B e f o r e:

HON. LEE P. GAGLIARDI,
District Judge

New York, New York
June 23, 1977
10:20 a.m.

APPEARANCES:

BARRY BASSIS, Esq.,
DAVID GOTTLIEB, Esq.,
Attorneys for Plaintiff

LOUIS J. LEFKOWITZ, Esq.,
Attorney General, State of New York
ARLENE SILVERMAN, Esq.,
Assistant Attorney General

THE COURT: All right. Proceed.

MR. BASSIS: May I make a statement, your Honor?

THE COURT: Yes.

MR. BASSIS: The day before yesterday --

THE COURT: Brief.

MR. BASSIS: Yes.

The day before yesterday your Honor ordered the state to reveal the addresses and phone numbers of the two sisters in the case. One of them was at the address yesterday, but the other one, Myrna, it was found out she has not lived at that address for two months and we have learned that the policemen have spoken to her since. She had in fact moved from there.

I called the Attorney General after I learned this fact and was told that the state might not produce that witness today and I was just told at 10:45 this morning that the witness is here and that Myrna Crespo will testify.

THE COURT: You want to speak to her now?

MR. BASSIS: I was going to request the Court to postpone her testimony until another date.

MS. SILVERMAN: May I just say, your Honor, I just saw Myrna myself this morning. Rather than bring

everybody down, I suggest Mr. Bassis talk to her now also.

THE COURT: Why didn't you tell him when you found out where she was located? I think your conduct here is quite unprofessional.

MS. SILVERMAN: May I say this to your Honor: You have now concluded that my conduct is unprofessional without having heard from me and only hearing from Mr. Bassis.

May I tell your Honor what I know and what has happened?

THE COURT: All I know is that you were notified that he wanted to have the opportunity to interview these witnesses beforehand.

MS. SILVERMAN: That's true.

THE COURT: Somewhere along the way you must have communicated that to Detective Hughes,and if you didn't, you should have, and now all of a sudden, when we are ready to go ahead with the hearing, the witness is present and the attorney for Mr. Santiago is first aware of it when he walks into the courtroom.

Is that so or isn't it?

MS. SILVERMAN: Your Honor, I have been practicing in this courthouse for ten years. I have done maybe hundreds and hundreds --

THE COURT: Just address yourself to the question that we have now.

MS. SILVERMAN: If your HOnor is interested in what I have to say, that's what I would like to do, rather than being called unprofessional without being given a chance to say anything.

Now, this is what happened here and this is all I know.

I came to this courtroom on Tuesday. Your Honor ordered me to give the addresses that I had for the young lady.

THE COURT: It took me three times to get you to do that. I had to direct you three times.

MS. SILVERMAN: Again, at that time I was not given an opportunity to explain why I did not give the addresses. I was ordered without being given any chance to explain. But I did do it.

Now I have a chance to explain.

In any event, I was ordered to give the addresses, and as your Honor knows, you were present, I read the addresses that I had into the record. Those were the addresses that Detective Hughes gave to me. As far as I know, those are the only addresses Detective Hughes has for these women.

I gave Mr. Bassis a phone number. I said that Myrna Crespo, which is the girl he said he didn't speak to, was not living at that address, that she was staying with a friend, and that is my understanding. I have no further information.

I gave him a phone number, which is the phone number I had. I called that number I think it was Monday or Friday. I can't say for sure. I left a message for Myrna Crespo to call me back. Myrna Crespo never called me back. I have never seen Myrna Crespo until this morning in the courthouse today.

After speaking here on Tuesday and giving the addresses I met Detective Hughes and we proceeded to Mildred Crespo's apartment, which was the address I gave Mr. Bassis. Mr. Bassis apparently has spoken with her. That is the only address I have for her. She was there.

Apparently Detective Hughes had asked her to have her sister present. I had anticipated seeing both of them there. Myrna Crespo was not present. I spoke with Mildred Crespo for maybe ten minutes and I left and that's it.

When we left we asked Mildred,I think Detective Hughes asked her, I don't think I did, if she

would please get in touch with her sister so that she would be present in the courtroom today, and she did, I presume, because her sister is present.

I have no other information.

THE COURT: You had an obligation to ascertain whether or not she was there for where she was or whether or not Detective Hughes was acquainted with whether she would be here or not, make the effort to do it, and make her available to Mr. Bassis.

MS. SILVERMAN: She wasnot available to me, your Honor.

THE COURT: I don't care if she was available to you.

MS. SILVERMAN: How can I make someone available if they are not available to my people?

THE COURT: She is certainly available to somebody in your office, namely, Detective Hughes.

MS. SILVERMAN: No, she wasn't, because Detective Hughes couldn't get her there for me. In other words, I asked Detective Hughes to have Myrna Crespo present.

THE COURT: What do you want to do, Mr. Bassis?

MR. BASSIS: If you prefer me to take a recess and speak to the witness, I will do that.

THE COURT: Yes. Do you want to do it now or do you want to wait and go ahead with the other witnesses first?

MR. BASSIS: If you would rather go ahead --

THE COURT: Why don't we go ahead with the other witnesses?

MS. SILVERMAN: May I make a further statement, your Honor?

THE COURT: No, let's proceed.

MS. SILVERMAN: We are going to proceed.

THE COURT: Call your first witness.

MS. SILVERMAN: I call Detective Hughes.

THE COURT: This hearing is being held pursuant to the order of the Circuit Court of Appeals dated June 6, 1977, remanding the matter to me to hold a hearing upon the application of the defendant or respondent apellant in the Court of Appeals to reopen the habeas corpus hearing for the purpose of presenting additional evidence, as set forth in paragraph 4 of the Order of the Court of Appeals, and that's what we are doing this morning.

All right, call your first witness.

MR. BASSIS: Excuse me. May I request an offer of proof on the detective's testimony?

I think it is irrelevant to the issue here.

I have the state's brief in Davis v. Lasker, a Supreme Court case upon which we relied. It says "Nothing in the record indicates that the police even suspected Green," who was the prosecution witness in that case, "of having committed the burglary. The only officer to testify on this subject specifically stated that he did not suspect Green."

Therefore, the Second Circuit has ordered an evidentiary hearing, has not stated exactly what this hearing is to determine.

I suggest that the hearing is to see whether the sisters believed that their brother had been arrested or taken into custody at the time they came forward as witnesses.

As this Court stated and the Court's decision in Davis v. Lasker indicates, the fact of whether an arrest had actually occurred is actually irrelevant to the issue.

Therefore we ask to exclude that testimony unless it is shown to be more relevant.

THE COURT: The question of the arrest itself, as I see it, is not relevant. The question that really is relevant is the state of mind of the witness.

I don't know whether Detective Hughes has

got anything to testify with respect to anything that may hae had to do with that state of mind.

I will take it and if it is not relevant, we will strike it.

MR. BASSIS: Thank you, your Honor.

MS. SILVERMAN: Detective Hughes is outside, your Honor.

THE COURT: All right.

MS. SILVERMAN: Are any of Mr. Bassis' witnesses here, I would ask?

MR. BASSIS: No.

MS. SILVERMAN: If any of them come I would ask that they be excluded during the testimony of any of my witnesses.

THE COURT: All right.

Are any of your witnesses present?

MS. SILVERMAN: Not in the courtroom. They are out in the corridor, your Honor.

THE COURT: There is a witness room back there. They can sit in the witness room if they like.

MS. SILVERMAN: I think it is cooler in the corridor.

THE COURT: I just tell you it is available. I don't care where they are, as long as they are not in

the courtroom.

MS. SILVERMAN: Thank you, your Honor. I don't think it matters.

N E I L H U G H E S, called as a witness by the defendant, being first duly sworn, testified as follows:

THE WITNESS: Shield No. 71, Ninth Homicide Zone.

MS. SILVERMAN: May I inquire, your Honor?

THE COURT: Yes, proceed.

DIRECT EXAMINATION

BY MS. SILVERMAN:

Q Detective Hughes, by whom are you currently employed?

A By the New York City Police Department.

Q And how long have you been so employed?

A 20 years June 28th.

Q And what has been the nature of your employment with the Police Department?

A Well, right now I am a detective investigator. I was a uniformed policeman for eight years.

Q How long have you been a detective investigator, approximately?

A Approximately ten years.

Q And prior to that time, sir?

A Prior to that I was two years in the Youth Squard.

Q And prior to that?

A Eight years uniform.

Q Were you working the evening of December 16, 1971?

A Yes.

Q Where were you assigned?

A At that time I was assigned to the 42nd Detective Squad. That's 161st Street and Third Avenue.

Q And during the course of that evening did you respond to any calls?

A Yes, I did.

Q Did you respond to a call of a homicide that took place on Melrose Avenue in the Bronx?

A Yes, I responded to 827 Melrose Avenue at approximately 12:20, 12:25 on the 17th.

Q Who was the officer in charge of that investigation?

A I was.

Q How did you come to be the officer in charge of that investigation?

A Well, that particular night I was working a

tour of duty from 5:00 p.m. to 8:00 a.m. in the morning, which is 15 hours. If there were three detectives working we would break up the 15 hours into 5 hours apiece.

THE COURT: Is this really relevant?

MS. SILVEMAN: It is just by way of background.

THE COURT: I don't need any more background. I have read the entire record of the trial.

Q Could you describe then what happened after you responded to the scene?

A I responded to 827 Melrose Avenue. The deceased body had already left the scene. So I went to Morrisania Hospital and looked at the deceased, went back to the scene and did some investigating.

Q What did you do when you returned to the scene?

A I spoke to the girl in whose apartment house -- the murder had happened outside her apartment.

Q Do you remember her name?

A Isabel Alvarez.

Q What did you ask Mrs. Alvarez?

A I asked Mrs. Alvarez if she had seen anything outside of her apartment.

She stated she did.

Q Did you ask her anything else?

A Yes. I asked her if she could identify the man she saw stab Manuel Perez and she said she could and she gave me a physical description of him.

Q Did you speak with anyone else that evening, right after the murder, when you returned from the hospital?

A Yes, I spoke to two sisters, Mildred and Myrna Crespo.

Q Do you recall what you asked them?

A I asked them if they had seen the murder and one of them had said she did, she could describe the defendant.

Q Did you ask her for such a description?

A Yes, I did.

Q And then what happened, Detective Hughes?

A Then I went back into my office and I worked until 8:00 o'clock in the morning and then 8:00 o'clock in the morning I went back on the murder investigation.

Q And what did you do after 8:00 o'clock?

A I went back to the scene, rang door bells, interviewed neighbors, again spoke to Isabel Alvarez.

Q What day of the week would this be, if you recall?

A Well, the murder took place on Friday morning, close to midnight, and this would be some time Friday morning or Friday afternoon.

Q OK.

And what did you ask Mrs. Alvarez at that time?

A I again spoke to her about the crime and she told me that she had learned that the defendant's first name was Frankie.

Q Did she explain how she had learned that?

A Yes, she did.

Q What did she explain?

MR. BASSIS: I object, your Honor. This is all hearsay.

THE COURT: Sustained.

Q What did you do after she told you the name of the man she had seen in the stairwell earlier that morning?

A I don't recall exactly what I did. I know I worked possibly until around 3:00 or 4:00, and since I had worked from 5:00 o'clock the afternoon before, I had then gone home to get some sleep.

Q And then did you resume your work on the investigation after you had gotten some sleep?

A Yes, I did. That would be Saturday morning, the 18th of December.

Q And what did you do at that time, Detective Hughes?

A I went back over to the scene and I also spoke to the brother of the two sisters, which was Custodio Crespo.

Q Where did you speak with him?

MR. BASSIS: I object to all this as hearsay, your Honor.

THE COURT: No, overruled.

Q Where did you speak to him, Detective?

A In the 42nd Squad Office.

Q Wait a second. You said you went back to the scene, is that right?

A That is correct.

Q What happened at the scene, what did you do when you got to the scene?

A I again spoke to the girls, I spoke to Isabel Alvarez, and I spoke to Custodio Crespo.

Q Where was Custodio Crespo when you spoke to him at that point?

A He was at the apartment.

Q What apartment, if you recall?

A I don't know. He couldhave been in the Apartment 8, which is the apartment of Isabel Alvarez, or he couldhave been upstairs in his sister's apartment. I am not sure which apartment he was in.

Q Did you speak to anybody else at that time?

A Yes. I spoke to Isabel Alvarez' common-law husband. That's Benjamin Perez.

Q Then what happened, Detective?

A Both Custodio Crespo and Benjamin Perez were again spoken to in the 42nd Squad.

Q How, if you know, did they get to the 42nd Squad?

A I don't recall whether they came over on their own or whether I brought them over. It could be either one of two ways.

Q What did you tell them you wanted to speak to them about?

MR. BASSIS: Objection, your Honor, hearsay.

THE COURT: I will permit it.

A i told them that it was their neighborhood and that they should know who this guy Frankie was and I gave them my phone number in case they saw Frankie out in the street.

Q Did there come a time when you apprehended

Frankie?

A At approximately 11:45 on Saturday night I was home and I received a call that Frankie, Efrain Santiago, had been picked up and was present in the 42nd Squad Office.

Q Were you informed as to who had picked him up?

A Well, it was two detectives from my squad. I don't know their names right now, but I know there were two detectives that went out and picked him up off the street.

Q Were you informed as to the reason why they went out and picked him up?

MR. BASSIS: Objection, hearsay.

THE COURT: Yes, sustained.

Q Was Efrain Santiago arrested?

A Yes, he was.

Q Who arrested him?

A I did.

Q Did you arrest anyone else for this homicide?

A No, I did not.

Q Did you ever receive any information from anyone that someone other than Efrain Santiago was the individual in the stairwell on Melrose Avenue?

A No, I did not.

Q Can you explain to his Honor what types of forms are kept of a police investigation?

A Well, the original report of a crime, which was made out by uniform force, that would be a UF61. Any subsequent investigations by the detective would be a form called a DD5. Then there are certain arrest cards when we arrest somebody that are made out.

Q If someone is arrested are these forms filled out?

A Yes, they are.

Q All the forms or just some of the forms?

A Well, there would be a DD5 filled out with the defendant's name on it. There would also be arrest cards, there would be a listing of the defendant's name in central booking. So there would be possibly three or four listings of the defendant.

MS. SILVERMAN: I have no further questions, your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. BASSIS:

Q Officer Hughes, this crime occurred in December 1971, is that correct?

A Yes, sir.

Q Can I ask where the case folder is on this investigation?

A The case folder is missing.

Q The case folder would have contained reports dealing with the investigation of this murder, would it not?

A That is correct.

Q And this is a homicide case?

A Yes, sir.

Q Where is the notebook that you used to refresh your recollection at trial four years ago?

A In the case folder.

Q So that's missing now, too?

A That is correct.

Q How about your memo book, do you have that in court?

A No, sir. Usually with a homicide investiation all memorandums are kept in a notebook, not in a memo book.

Q Isn't it true that you had lost the memo book by the time of trial four years ago?

A No, sir.

MS. SILVERMAN: Your Honor, could I just ask Mr. Bassis to stand back a little further, because I am

having a little trouble hearing the question.

THE COURT: All right.

If you stand back a little bit it will be easier.

Q I refer to page 773 of the testimony.

Would you tell me if this is a correct recording of your testimony. Youwere cross-examined at that point and Mr. Getz referred to a book and said:

"Q What is that book?

"A It is a notebook, just an ordinary notebook. It is not a memo book."

MR. BASSIS: I am sorry. Could I just ask for a second, your Honor?

(Pause)

Q Aren't you personally responsible for keeping that notebook or memorandum book, whatever it is called, on the case?

A No, sir.

Q Is it not the practice of the Police Department to order policemen to personally safeguard that material?

A We do not personally safeguard our case folders, sir. In 19 -- in January of 1972 there was a transition from squad work to specialization, at which time I went into the Ninth Homicide Squad, which covers the northern

part of the Bronx. All records of the 42nd Precinct, whichwould be in the Seventh Homicide, went to the Seventh Homicide. I spent a full day at the Seventh Homicide looking for this record and I couldn't find it.

Q In any case, all these documents are missing now, with the exception of these papers that I have just been handed today?

I ask you to look at those.

A Yes, sir, I saw them.

Q These are the only documents remaining on the case.

Isn't it true that only one of them is signed by you?

MS. SILVERMAN: Objection, your Honor. I don't know what these documents are and I don't know where they came from.

MR. BASSIS: These are the documents that I was just handed by you this morning, the subpoenaed documents.

MS. SILVERMAN: I do think before he asks him if these are the only things available we should get some clarification of what they are and where they came from.

THE COURT: First let him ask the question.

A All right. The first report we have is a UF61, which we have right there. That would be made out by the uniform force and signed by the member of the uniform force.

Q That contains no details as to the investigation?

A No, that is just a report of the crime per se.

Q That wasn't filled out by you?

A No. We have one DD5, which is signed by me on the bottom. That is of the arrest.

Q Just of the fact of the arrest, correct?

A Right.

Now, there were other DD5's made out by me.

Q But those are not here, are they?

A We sent for the records. This is all we received. Those DD5's should be on the file. The only DD5 they gave us is the arrest.

This one here is a DD5 signed by the detective assigned to the Medical Examiner's unit, giving us the cause of death.

Q And so all the other documents dealing with the investigation itself are missing at this point, you have not been able to use them to refresh your recollection, is that correct?

A That is correct. The DD5's, if I may add, should have came with this. All DD5's made out by me are kept with this case.

Q So you have not seen them to refresh your recollection?

A No, sir, I have not.

Q So you come into court now five and a half years after the incident and claim that you are fully familiar with the facts and circumstances of this investigation, sir?

A I claim I know a little about the investigation, yes, sir.

Q Was it true that you are fully familiar? Those are the words you used in your affidavit.

MS. SILVERMAN: Objection, your Honor. I don't know what that means.

MR. BASSIS: I am quoting the officer's affidavit filed in the Court of Appeals.

MS. SILVERMAN: Perhaps he can ask him if that was in his affidavit.

THE COURT: No, he is doing it properly.

Overruled.

Q Did you sign this document?

A If I signed it --

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Q Item No. 2, would you please read that into the record?

A It says, "I am fully familiar with the facts and circumstances surrounding the investigation of a murder that took place just before midnight."

You want me to read further?

Q No, I think that is sufficient.

A OK, fine. I had reviewed the case folder that the District Attorney had before I signed that affidavit and that had most of the facts of the investigation in it.

Q Did that have other facts than appear here on these three documents?

A No, sir.

Q So then the information on the three documents that you just described are the only ones you have seen?

A Right.

Q And none of them deal with the investigation per se?

A Right.

Q May I ask how many cases you have investigated in the last five and a half years? Can you estimate that?

A Well, I would say probably, worked on myself and with my partners, an average of 25 homicides per year, so

times 25 times five and a half.

Q Yet you claim the details of this investigation remain firmly fixed in your memory?

A If I would remember the date of the trial, which was 1973, I would be familiar with the case in 1973, which would be only say two and a half years ago.

Q 1973 is --

A Sorry. Three and a half years ago.

Q Over four years ago?

A I don't know when the trial was.

Q I believe it was over four years ago.

A So we eliminate two years then.

Q But isn't it true, Officer, at the time of trial, over four years ago, you were not fully familiar with the details?

MS. SILVERMAN: Objection.

Q Weren't you completely confused at that time about the order in which the witnesses came forward?

MS. SILVERMAN: Objection, your Honor.

THE COURT: Overruled.

A The reason I possibly could have been confused as far as what I received from the witnesses possibly could be that I don't speak Spanish and that I had to speak with them through the aid of an interpreter. So

that could be the reason why I was confused.

Q But the fact of the matter is that you were confused as to which order they came through?

A If you say so.

MS. SILVERMAN: Objection.

A I didn't read it in the minutes, sir.

Q Did you not testify at the trial that both sisters gave you descriptions the same night and immediately following Isabel Alvarez' description?

A I don't recall, counsel. I will have to read it.

Q I show you page 93 of the transcript. That indicates your initial interview with Alvarez at approximately 1:00 a.m., is that correct?

A That's right.

Q And she gave you a description at that time?

A Right.

Q Then you later testified, at page 95, is it not correct, that after you took that description from Alvarez that you then spoke to Mildred --

"Q Did you then speak to Mildred and Myrna?

"A Yes.

"Q On the same evening?

"A Yes.

"Q And did you ask them to give you a description

of the alleged assailant?

"A Yes, I did.

"Q Did they give you a description?

"A Yes, they did."

MS. SILVERMAN: Objection, your Honor. I don't understand.

THE COURT: Overruled.

Q Is that your testimony, is that correct?

A Yes, it is.

Q And that is essentially your testimony or is it your testimony in this court? Did you not say that only one sister gave you a description now?

A To the best of my recollection, yes, I did.

Q And so it is a contradiction between --

MS. SILVERMAN: Objection, your Honor.

THE COURT: Sustained.

Q May I ask then at a later point in the trial, againreferring to the night of your conversation with Alvarez:

"Q And when you spoke to her did you speak with her with Detective Sanchez in the early morning hours at 1:00 a.m.?

A Yes.

Q And at that time you don't have the description

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that she gave you?

"A No, I don't.

"Q And at that time did the Crespo sisters tell you they were a iwtness to this incident?

"A I cannot recall. I remember speaking to the Crespos a few hours later."

MS. SILVERMAN: What is the question now?

THE COURT: The question is "Was that your testimony?"

A Yes, sir, it was my testimony. It was taken down.

Q Officer, do you have a specific recollection of Peewee Crespo and Benjamin Perez coming to the station-house on December 17?

MS. SILVERMAN: Objection.

THE COURT: No, overruled.

A December 17? That would be Friday?

Q Yes.

A No, I do not.

Q Your affidavit states, does it not, that the murder took place before midnight December 16, 1971?

A Right.

Q And that is correct, is it not?

A Well, the murder took place on December 17 at

12:15, so it would be incorrect.

Q The murder took place just before midnight December 16, 1971.

This is your affidavit, is it not?

A Right.

Q And is that not correct?

A Well, from reading the UF61, which at the time I signed the affidavit I did not have, I assume that the murder happened at that time. From reading the UF61, which gives the official time and date of occurrence, it is 0015 hours on the 17th.

Q But at the time you filled out this affidavit you believed it was on the 16th?

A Somewhere in the neighborhood of midnight, either the 16th or the 17th. It was close to midnight.

Q You later state in your affidavit, do you not, "Because of this, I asked for help of Custodio Crespo and Benjamin Perez, who I learned both knew Frankie. They came down to my office the day following the murder."

Is that not your affidavit?

A Yes, it is.

Q And referring back to item 2, the day after the 16th would be the 17th, would it not?

A The day after the 16th would be the 17th. But

if I worked all day the 17th the day after I finished working would be the 18th.

In other words, I worked the 16th right through to the 17th, until the afternoon. There is a possibility they might have been spoken to on Friday. Right now I recollect that they were spoken to on Saturday, which would be the 18th.

Q It is true that in your affidavit, though, in your sworn affidavit, you had stated that it would have been the 17th?

A Again, counselor, when I signed that affidavit I had not spoken to the Crespo sisters and I had not seen any of these reports. So it could possibly be that I spoke to them on the 18th, not the 17th.

I signed the 17th. At that particular time I thought it was the 17th. But now, speaking to the girls and getting the order of the days, I remember it was the 18th, which would be Saturday, when I spoke to the two.

Q But your report does indicate the 17th?

A Yes, sir, that is correct.

MS. SILVERMAN: Asked and answered, your Honor.

THE COURT: All right.

Q You said you refreshed your recollection by the police reports as to when this happened, yet none of these police reports contain any reference to Peewee Crespo's or Benjamin Perez' visit with you.

A No, I said I refreshed my recollection with the District Attorney's report, not the police reports. I could never get the police reports.

Q Do the District Attorney's reports contain any information about Peewee?

A Yes, sir, they do.

Q Why have we not been furnished with that information pursuant to our subpeona?

A I have no idea.

Q Officer, you knew Peewee Crespo and Benjamin Perez gefore this murder investigation, did you not?

A No, sir.

Q You never met them?

A No, sir.

Q You did not know of them?

A No, sir.

Q At all?

A No, sir.

Q And you took them just to be ordinary law-abiding individuals in the community?

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MS. SILVERMAN: Objection.

THE COURT: Yes, sustained.

Q Do you know where Benjamin Perez is at this moment?

A No, sir.

Q You are unfamiliar with the fact that he is serving a life sentence at the present time due to an investigation in the Bronx?

A Yes, sir.

Q Do you remember how Benjamin Perez and Custodio--

MS. SILVERMAN: I'm sorry. I can't hear.

Could you read back that last question and the last answer?

(Record read)

Q How did the two of them, referring to Benjamin and Peewee Crespo, get to the stationhouse that day?

A As I testified before, I am not sure whether they come in on their own or whether I asked them to accompany me to the stationhouse. There is a good possibility they came in with me when I went over to 827 Melrose Avenue, but I cannot recall.

Q So that you could have picked them up and taken them down to the stationhouse?

A Yes, sir, I could have.

Q And people in the area wouldhave seen you driving down towards the stationhouse?

MS. SILVERMAN: Objection.

THE COURT: Sustained.

Q How many other members of the community do you now recall coming down to the stationhouse that day to assist in the investigation?

MS. SILVERMAN: Objection. He didn't say any did.

Q Did any other members of the community come down to help you?

A No, sir.

Q What time did Benjamin and Peewee come down to the stationhouse that day?

A I can't recall. It was some time Saturday. I can't recall what time.

Q Didn't they in fact come at 11:00 in the morning on the 17th?

A I have no idea.

Q I ask you if this was your testimony.

MS. SILVERMAN: Can I have the page?

MR. BASSIS: Yes. 760.

Q This is referring to December 17, if you will

read back. You see a reference to Brenda Reyes? You spoke to her, in fact, the night of the investigation?

A Right. She had been with the deceased.

"Q What time did you return to 827 Melrose Avenue?

"A That would be about 11:00 o'clock in the morning and then again at 1:00 o'clock in the afternoon.

"Q What did you do, Detective Hughes, when you returned to 827 Melrose Avenue at 11:00 o'clock in the morning?

"A I spoke to a few people and I asked them to come into the stationhouse."

Is that correct?

A Right.

Q So wouldn't those two people that you asked to come down to the stationhouse have been Benny Perez and Peewee Crespo?

A Those are the only two people that I spoke to on the case.

Q When did you learn that the murderer's nickname was Frankie?

A To the best of my recollection, it would be Friday.

Q And it was Friday --

A Friday afternoon.

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Q In the afternoon?

A Yes, sir.

Q Then you learned that the murderer's nickname was Frankie after you in fact had taken or asked Peewee Crespo and Benjamin Perez to come down to the stationhouse?

A No, sir, I don't think so.

Q Just by your statement as to the time, you admitted that you asked them to come down at 11:00 o'clock.

Did you not just state that?

A Right. I had --

Q Excuse me. Then you did not learn of the fact that the murderer's nickname was Frankie until that afternoon, is that correct?

A No, I had in mind the murderer's nickname Frankie from Isabel Alvarez. She had spoken to her husband.

Q Is this not correct:

"Q But the night that you interviewed them they didn't tell you his name was Frankie?

"A Not the first time. I reinterviewed them the next day, which would still be the 17th. It would be in the afternoon."

A If I am correct, counselor, we are talking

about the girls now, not the men.

Q I ask you now, page 114:

"Q On the night you interviewed Isabel Alvarez did she tell you she knew the name?

"A Not then.

"Q When did she tell you that for the first time?

"A The next-- that same afternoon."

A Referring to the next afternoon, which would be thenext afternoon after I had spoken to her originally, which would be the morning of the 17th, approximately 1:00 a.m. Then I spoke to her again the afternoon of the 17th. That's what I am getting from reading my testimony.

Q But does your testimony not indicate that she did not tell you the nickname of the defendant or the perpetrator as Frankie until the afternoon of the 17th?

A That's what I am saying. When I first spoke to Isabel Alvarez she gave me a physical description.

Q With no nickname?

A No nickname.

Q So you did not obtain a nickname from anyone until the afternoon of the 17th?

A That is correct. That would be the same day, the afternoon.

Q Detective Hughes, how many other police

officers were involved in the investigation of this case?

A Well, I know Detective Sanchez was with me as an interviewer. I know I at all times had another detective with me on Friday afternoon and on Saturday, but I don't recall who they were.

Q Were there not any other teams that were not actually in your presence, any other officers investigating the case not in your presence?

A Usually a homicide like this, it would just be you and some other detective that went out, and it was my case, so I could take anybody I wanted with me.

Q Where is Isabel Alvarez at the present time?

A I have no idea. I checked at her last known address and also checked with the postal authorities, and they could find no record of it.

Q Is it not true that you have not been looking for her?

A I looked for her, but not as hard as I looked for the Crespo sisters.

Q Is the statement in your affidavit correct, No. 8:

"As of this date I have been unable to locate either Isabel Perez" -- which I take it is Isabel Alvarez --

A Correct

Q --"or the Crespo sisters. I have learned that Isabel Perez moved over a year ago and that the Crespo sisters moved approximately three years ago. I am still attempting to ascertain their whereabouts, but there is no basis that I know of for any conclusion that either Mildred or Myrna Crespo believed that their brother was a suspect in this case."

A Yes, sir.

Q Did not the Assistant Attorney General inform you not to look for Isabel Alvarez?

A She told me to find the Crespo sisters.

MS. SILVERMAN: Could Mr. Bassis give us time and place?

THE COURT: Overruled.

A I was told to find Isabel Alvarez and the two Crespo sisters by the Chief of the Homicide Bureau in the Bronx. That's A. D. A. Quinn.

I went out, I did an initial investigation, and couldn't find anybody

Then I was contacted by the Attorney General's office and I was told to find the Crespo sisters.

Q So that you have not been looking for Isabel Alvarez?

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A No, sir,I have not been.

Q But you have no reason to believe it would be difficult to find her, do you?

MS. SILVERMAN: Objection.

THE COURT: Sustained.

Q Does not Mildred Crespo have a rough idea of her whereabouts?

MR. SILVERMAN: Objection.

THE COURT: Sustained.

Q Isn't it a fact, Detective Hughes, that at the trial you had no idea which witnesses had given you each of the descriptions?

MS. SILVERMAN: Objection.

THE COURT: It is already answered.

A I have already answered that.

Q And you did not write down any of that information?

A If I remember, at the trial I had a physical description of the defendant in my book as far as what he was wearing, his height, his weight, et cetera, but I did not have marked in the book which of the girls had given it to me.

Q Weren't you also completely confused at the pretrial hearing as to when the photographic identifications

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had taken place?

MS. SILVERMAN: Objection.

THE COURT: Overruled.

A Was I completely confused?

Q Yes.

A Well, I know for a fact that Isabel Alvarez looked at the photos the night that I arrested the defendant.

Q Which would be?

A The 18th of December, I think.

Q When did the sisters identify the photo?

A One of the sisters a few days later and one of the sisters I think later on that evening of the 18th or early morning of the 18th.

Q I refer you to page 88:

"Q All right.

"Now, do you recall on what date you showed the photographs to Myrna?

"A Yes. December 29th."

A All right. Well, that would be one day that I showed them the photographs.

Q So that would have been how many days after you arrested the defendant?

A It would be 11 days after.

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Q Did you not also testify at that hearing that you had had them identify the photographs only several days after the defendant's arrest, approximately December 19?

A One of the sisters identified the photographs within a short period of time after the arrest. The other sister, according to my testimony, identified the photograph on December 29th.

Q Detective Hughes, you did not speak with the officers who actually took the defendant into custody on the 18th, did you?

A Right now I can't recall.

Q But you did testify--

MS. SILVERMAN: Objection, your Honor. There is nothing inconsistent. It seems to me he should ask the officer to refresh his recollection.

THE COURT: Overruled.

"Q Did you have a conversation with the police officers that took this defendant to the 42nd Precinct?

"A No, sir, I did not. The one officer supposedly was there was not there when I got to the stationhouse."

Is that correct?

A Yes, sir.

Q So then you did not in fact speak to the officers

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or learn from them under what circumstances they arrested the defendant?

MS. SILVERMAN: Objection.

THE COURT: Sustained.

Q I ask you if this is correct. This is referring to page 764, referring to your first interview with Isabel Alvarez.

MS. SILVERMAN: Your Honor, I don't understand when Mr. Bassis keeps saying, "Is that correct," does he mean is that what happened or is that what the record reflects?

MR. BASSIS: What the record reflects.

"Q And at that time did she give you a description of the person who she believed to be the accused in this particular matter?

"A Yes.

"Q And did you reduce that description to writing, Officer?

"A Yes.

"Q And do you have that with you, sir?

"A No, I don't."

A As I say, I remember in my book I had a physical description of the defendant written down, but I did not have which of the girls gave it to me.

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Q And you were missing the book, memo book or papers --

A I had the book with me then. He is asking me if I had what Isabel Alvarez gave me and I am saying no, I don't. I had a physical description. I don't know who gave it to me.

MR. BASSIS: That's all.

THE COURT: Detective Hughes, when were you asked to ascertain the location of the Crespo sisters, do you recall?

MS. SILVERMAN: Your Honor, I can't hear. May I have the question read back, please.

THE COURT: Yes.

(Record read)

THE WITNESS: Was that the first time, your Honor?

Excuse me. I am sorry.

(Record read)

THE WITNESS: The first time I was asked anything about the Crespo sisters I was on trial, the trial of Wayne Barnes in the Bronx, and one afternoon I didn't have to testify I went out and started to make inquiries as to where they were.

THE COURT: When was that, do you recall,

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approximately?

Incidentally, there are people who have walked into this courtroom. If anybody is supposed to be a witness you are supposed to be excluded from the courtroom.

THE WITNESS: I had a trial in March. I am not even sure if that was the Wayne Barnes trial. I was assigned a couple of weeks ago to the District Attorney's office for the explicit purpose of finding the Crespo sisters. So that would be within two weeks, your Honor.

THE COURT: When did you in fact locate them?

THE WITNESS: I started looking for them on Monday.

THE COURT: Two weeks ago?

THE WITNESS: Yes. And on Thursday of that date I learned where they were.

THE COURT: Did you interview them on that day?

THE WITNESS: Yes, I did, I interviewed both sisters on Thursday.

THE COUT: Were they living together?

THE WITNESS: No, they were not. One sister was living at Arthur Avenue and when I went to see her the other sister was there.

56a

THE COURT: Did you ascertain the address of the other sister?

THE WITNESS: Yes, I did. She was staying with a friend. She had no permanent room, but she was staying with a girl friend and her husband.

THE COURT: When were you asked to bring them down here?

THE WITNESS: Today. I was asked to bring them down a few days ago.

THE COURT: A few days ago?

THE WITNESS: Yes.

I think it was last Thursday or Friday.

THE COURT: Did you contact them then and tell them you were going to bring them down today?

THE WITNESS: Yes, I did.

THE COURT: You got a hold of both of them then?

THE WITNESS: No, I got a hold of one sister and told her to contact the other sister and please have her ready this morning at 8:30.

THE COURT: Did she tell you the other sister was at the same place? Did you inquire about that?

THE WITNESS: I had called up where the other sister supposedly was, left a message for her to call me.

57a

She didn't call me.

THE COURT: Did you call back?

THE WITNESS: No, I just called once, left a message. Then when I spoke to Mildred Crespo I said, "Can you get your sister Thursday morning?" And I was told she would have her there Thursday morning.

THE COURT: That was a couple of days ago?

THE WITNESS: Yes, sir.

THE COURT: When did Ms. Silverman ask you to bring them down here?

THE WITNESS: If I am not mistaken, the 16th or the 17th of June, right before last weekend.

THE COURT: And you didn't indicate to her that there was going to be any difficulty getting them here?

THE WITNESS: No, I stated that I would get them here.

THE COURT: Were you asked within the last day or two to see if you could locate both sisters?

THE WITNESS: I spoke to one of the sisters yesterday.

THE COURT: Were you informed that Mr. Bassis had wanted to speak to both sisters?

THE WITNESS: Yes, sir, I was.

58 a

THE COURT: When was that?

THE WITNESS: I cannot recall. It is possibly around that same date that I was notified I had to bring them down or it could have been maybe Tuesday, because one of his investigators was up in my office on Tuesday, if I am not mistaken.

THE COURT: All right.

REDIRECT EXAMINATION

BY MS. SILVERMAN:

Q Detective, you mentioned something called a memo book and a notebook.

Is there a difference between those two items?

A Yes. A memo book is a daily record of your police activities, but in doing homicide work I would just keep a memorandum.

I couldn't possibly put everything in the memo book that I put in the memorandum. That's a separate notebook, a memorandum.

Q You are calling one a memo book and one a memorandum?

A Right. It is a separate notebook.

Q What is the separate notebook, the memorandum?

A Yes.

Q Is it individual sheets?

59 a

A No, it is a small pad. Within this pad you keep dates and times.

Q How does that differ from a memo book?

A A memo book is your official Police Department diary that you keep, but it would be a duplication of work for me to fill out the memo book the same as I keep the homicide memo.

Q Homicide memo?

A Right.

Q And what did you keep in this case?

THE COURT: Nothing, evidently.

Q A homicide memo or a memo book?

A What I kept in the memo book was dates, times when I spoke to people.

Q That is what you kept?

A That's right.

Q And was that available to you at the time of the trial of this case?

A Yes, it was.

Q And have you looked for it for this hearing?

A Yes, I stated I did.

Q And you have not been able to find it?

A No, I have not.

MS. SILVERMAN: May I have this marked for

60a

identification, your Honor?

THE COURT: Yes.

xx (Respondent's Exhibit 1 marked for identification)

Q When did you receive Respondent's Exhibit 1 marked for identification, when was the first time you saw that?

A The first time I saw this I picked it up this morning at approximtaely 10:00 o'clock at 1 Police Plaza.

Q Did someone direct you to pick this up there?

A Yes. I was contacted at my house yesterday by Assistant District Attorney William Quinn, Chief of Homicide, who stated that he couldn't possibly get those up to his office, if I would mind picking them up, and I said I would.

MS. SILVERMAN: I would like to offer these into evidence, your Honor.

MR. BASSIS: No objection.

THE COURT: Received.

xx (Respondent's Exhibit 1 received in evidence)

MS.SILVERMAN: Would your Honor like to see it?

THE COURT: Are you going to ask him some questions with respect to it?

MS. SILVERMAN: Yes, I will.

612

THE COURT: Go ahead.

Q Would you tell me what the second sheet of paper is to that exhibit?

A The second sheet of paper is a subpoena.

Q Who signed that subpoena?

A Well, the person's name on the bottom is Mario Merola. It is not signed. It is asked for by Mr. William Quinn, Chief of Homicide.

That's a subpoena for the records that are held by the Police Department.

Q And what is the date of that subpoena?

A 6/20/1977.

Q So then these are not records that you have ever had in your possession prior to this morning when you received them from the Police Headquarters here, is that right?

A That is correct. Those records were in the homicide folder, which has gotten lost.

Q You mean the one that you have not been able to locate?

A That is correct.

Q This contains, as I understand it, UF61's and DD5's, is that correct?

A That contains only one UF61, which is correct,

62a

and it only contains one DD5. There were more DD5's made out.

Q Could you tell me how many copies of a DD5 and a UF16 are made out?

A Well, a DD5, which is the report that I am familiar with, there's three copies. One I keep with the folder, one is sent to the precinct of occurrence, and the other copy is sent to Statistics and Records.

They collate all of the DD5's in the City and supposedly put them together, but it hasn't been done in the case.

Q Was this subpoena addressed and were these supplied by the Bureau of Statistics and Records?

A Yes.

Q And what about, do you know, the UF61's, how many copies there are of those and where they go?

A There's three or four. One goes to the squad handling the case, one goes to the specialty squad, one stays in the precinct, and again, one goes to Statistics and Records.

Q So the copy you have been able to find would have been the copy that went into your folder? In other words, you never found the copy that youretained for your folder because the folder was missing, is that right?

A That is correct.

Q But you did file originals or whatever, the copies you were supposed to?

A They would be copies of the originals that are kept in Statistics and Records. They get the original to that copy. But there are supposed to be other DD5's with that case, which did not arrive in the envelope.

Q But the precinct wouldhave a copy?

A The 42nd precinct handles approximately 20,000 to 22,000 of those a year, and we are going back six years ago. I went to the precinct and tried to find them. I couldn't.

Q You stated that you looked at the District Attorney's file to refresh your recollection prior to testifying here today or filling out the affidavit?

A Well, when I first spoke to Mr. Quinn, which would be while I was on trial on the other case, I took the folder out and I reviewed some of the points of the trial and also read their homicide memorandums.

Q You stated there was something in this file that refreshed your recollection about Peewee Crespo.

What was that?

A There is a typed sheet in there.

MR. BASSIS: I object, unless this was

filled out by you based upon your own observations. This would be hearsay.

THE COURT: I frankly don't think that any of it is relevant to what we are doing here, to be honest with you.

MS. SILVERMAN: Your Honor, I just wanted to find out--

THE COURT: I don't care what you wanted to find out. It is not relevant. I don't have to find out about it and I don't need to know about it.

MS. SILVERMAN: May I just be heard briefly?

THE COURT: No.

Next question.

MS. SILVERMAN: I have no further questions.

THE COURT: No further questions?

MR. BASSIS: Can I ask a single question?

THE COURT: Yes.

RECROSS-EXAMINATION

BY MR. BASSIS:

Q Officer, these are the only three documents referring to the investigation on this case that you know still exist?

MS. SILVERMAN: Objection.

Q That were filled out by you or the Police

65a

Department?

A As I stated, all DD5's were sent to Statistics and Records. They should be down there. That is what they sent me or sent Mr. Quinn's office this morning. There should be more.

Q These were found in the District Attorney's office, did you not state?

A No, the particular piece of paper that you are holding now I received today from 1 Police Plaza. They are the original copies of the DD5's and also the UF61. But there should be more than one DD5. That DD5 just states the arrest of Efrain Santiago. There should be other DD5's starting with when I went to the scene, what I did one day,what I did the next day.

MR. BASSIS: Thank you.

That's all.

THE COURT: All right. We will take a five-minute recess.

(Recess)

THE COURT: Is Detective Hughes outside?

MS. SILVERMAN: Yes.

THE COURT: Would you ask him to step in, please?

MS. SILVERMAN: Yes.

66a

THE COURT: What is your schedule, Detective?

DETECTIVE HUGHES: As of today, your Honor?

THE COURT: Yes.

DETECTIVE HUGHES: I am off. I am working overtime.

THE COURT: Is it inconvenience for you to come back after lunch?

DETECTIVE HUGHES: No. I am going to drive the girls home anyway.

THE COURT: All right. I may want to ask you some questions later on.

DETECTIVE HUGHES: Fine.

THE COURT: I don't see any reason for you waiting around now. If you want to come back at 2:00 o'clock, why, you can do that.

DETECTIVE HUGHES: Fine.

MS. SILVERMAN: Your Honor, before we begin -- I have a witness on the stand-- I wanted to make a record. I did not for this hearing attempt to locate Isabel Alvarez because I did not see her testimony as relevant to the issues on this hearing. I did ask Detective Hughes to find her when we were when we were in the Second Circuit, as well as the sisters.

So I just do want to say I have made no attempt

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to find Isabel Alvarez for this particular hearing, but because everybody seems very concerned about witnesses being available -- I don't know if Mr.Bassis has found her or not. He apparently has found Mr. Perez, who, again, I did not perceive as relevant to this hearing.

THE COURT: It is your obligation to present your case.

MS. SILVERMAN: I just want to say to your Honor I don't want there to be any problem here. So if somebody feels, either your Honor --

THE COURT: I am not trying the case for you or for --

MS. SILVERMAN: I would just say if you wanted us to, at Mr. Bassis' request, I would ask Detective Hughes, if he could, to make some effort to find Isabel Alvarez.

I just want that clear on the record. I don't want any problems with this later on.

THE COURT: You should anticipate your problems ahead of time, not afterwards.

MS. SILVERMAN: I call Mildred Crespo to the stand.

(Norma Seltzer was duly sworn as the interpreter)

M I L D R E D C R E S P O, called as a witness by the defendant, being first duly sworn, testified as follows, through the interpreter:

DIRECT EXAMINATION

BY MS. SILVERMAN:

Q Is it Miss or Mrs. Crespo?

A Mrs. Crespo.

Q Mrs. Crespo, are you currently employed?

A No.

Q Do you recall an incident in the stairwell of your apartment in December 1971 in Melrose Avenue, the Bronx?

A Yes.

Q What do you recall?

MS. SILVERMAN: Does your Honor want to dispense with this?

THE COURT: I don't know that this is necessary.

MS. SILVERMAN: OK, fine. Maybe we just better ask one question to lead into my next.

Ask her what she recalls.

THE COURT: It is not necessary.

MS. SILVERMAN: OK.

69a

Q Did there come a time on the evening of December 16, 1971 or during the early morning hours of the following day that policemen came to your building?

A Yes.

Q How many came?

A Two.

Q Were they wearing uniforms?

A What do you mean,uniforms? A detective or a policeman?

Q A policeman's navy blue uniform.

A No.

Q Were they detectives then?

A Yes.

Q Does she recall who they were, does she know their names?

A I remember Detective Hughes only.

Q Did you speak to Detective Hughes at that time?

A Yes.

Q What did he ask you?

A Well, he came up looking for that lady Isabel to my house. I was in my house that night. She was in my house that night. He wanted to talk to her. Then she said to him that I had also seen what happened. Then I said to him what I saw.

70a

Q What did you say to him in particular, if you remember your words?

A I cannot remember.

Q Did she give a description of the man she had seen in the stairwell with the knife?

A Yes, I told him.

Q Did she speak to him directly in English?

A No.

Q To whom dis she speak? To whom did you speak?

A Well, the only one that was there that night that knew English was my sister.

THE COURT: This is when the detective came?

MS. SILVERMAN: Right.

THE WITNESS: Yes, when Isabel was in my house.

Q Was Detective Hughes accompanied by another officer?

A Yes.

Q And you did tell Detective Hughes through someone else what the man looked like who was in the stairwell, is that right?

A Yes.

Q When did you next see Detective Hughes?

A When he came to my house with the pictures.

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Q Between the time that she saw Detective Hughes for the first time-- between the time you saw Detective Hughes for the first time and the time with the photographs did you see the defendant, Efrain Santiago, anywhere?

A You mean after it happened?

Q Yes. After it happened did you see the defendant again?

A Yes, in about three days.

Q Where did you see him?

A In the front of where I used to live.

Q And what did she do, if anything, when she saw him?

A Well, I was afraid a little bit.

THE COURT: No. What did you do?

Q Go ahead.

A I was afraid--

THE COURT: No.

What did you do?

MS. SILVERMAN: She said --

THE COURT: Please.

A I told my brother and my brother called the police.

Q Did you see the policemen come?

72a

A Yes.

Q Where were you when the policemen came?

A By the window.

Q Did there come a time either prior to the trial or during the trial that you spoke to a Mr. Getz?

A Yes.

Q When did you speak to Mr. Getz?

A About three weeks-- about one week before the trial started.

Q Where did you see Mr. Getz?

A He came to my house.

Q Was he alone or was he with someone?

A He was with his secretary.

Q Do you remember the name of his secretary?

A No.

Q Did you speak English to Mr. Getz at this meeting?

A No.

Q How did you speak to Mr. Getz?

A The secretary is Spanish. She knew Spanish.

Q What did Mr. Getz ask you through his secretary?

A About what I had seen that night.

Q Was anybody else present other than Mr. Getz, his secretary and Mrs. Crespo?

73a

A When I was talking to him?

Q Yes.

A No.

Q Did you tell Mr. Getz' secretary that your brother, Peewee Crespo, had been taken into custody by the policemen investigating the death and that you were aware of the fact prior to giving information to the Police Department with regard to your knowledge of the crime?

A You mean that I told him?

Q Yes.

A No.

MS. SILVERMAN: No further questions, your Honor.

CROSS-EXAMINATION

BY MR. BASSIS:

Q This crime happened a long time ago, didn't it, Mildred?

MS. SILVERMAN: Objection.

THE COURT: Yes.

Q Do you really remember the facts very clearly?

MS. SILVERMAN: Objection.

THE COURT: No, I will permit it.

A Yes.

Q And you are just as certain of the facts of the crime as you are of your conversation with the lawyer?

A Yes.

Q Did you just testify now that the night the detective came to your house and Alvarez was there you told him that you saw the murder?

A It was the lady Isabel that told the detective that I also knew what had happened.

Q But you did not tell the detective you saw the crime?

A No, only after she said to him that I have seen it.

Q But isn't it true that you did not tell him that you saw the crime and you did not give him a description of the man who did it until the next afternoon?

A Yes, I told him.

Q Not until the next afternoon, though?

A I don't remember. I know I told him, but I don't remember when.

Q Would this refresh your recollection?

THE COURT: She can't read that. You can stand back there and ask her whether she was asked this question and did she give this answer at the trial.

75a

"Q Did you ever give a description to the police of the man who you saw commit that crime on December 17, 1971?"

MS. SILVERMAN: What page is that?

MR. BASSIS: 236.

"A You mean that same time, that same night?

"Q Any time.

"A The next day he came to my house."

Was that your testimony at the trial?

A You mean like on the next day I told him that?

Q On the afternoon of the 17th.

A I don't recall if it was that same evening that I told him.

Q Did you give this testimony?

THE COURT: Were you asked this question, did you give this answer?

MR. ASSIS: I am sorry. Page 209.

"Q Now, on the night that you saw this thing happen, did you talk to the police that night?

"A Yes, because the lady came to my house, the lady downstairs. They came to talk to her. She was in my house."

THE COURT: Did you make that answer to that question?

76a

A Well, as she was in my house, yes.

"Q And do you know Detective Hughes, Mrs. Crespo?

"A Yes.

"Q All right. And did he come and see you that night?

"A Yes.

"Q All right. And did you tell Detective Hughes what you had seen?

"A No, the lady did."

THE COURT: Did you make those answers to those questions on the trial?

THE WITNESS: You mean that I said that I had seen him?

THE COURT: Did you give those answers to those questions on that trial?

THE WITNESS: Yes.

Q Does that refresh your recollection? Did you not speak to the policemen until the afternoon of the second visit?

A The truth is that I cannot remember.

Q And is it not true that your sister did not give a description of the murderer that night either?

MS. SILVERMAN: Objection, your Honor.

THE COURT: In your presence.

77a

Q In your presence.

THE INTERPRETER: May I have that question?

(Question read)

A No. Well, when my sister was talking to Detectige Hughes, because Isabel did not know any English, so she was telling him what Isabel was saying, and while my sister was telling this to the detective my baby started to cry and I went to the room.

Q But you never heard your sister in your presence tell the police that she herself had seen the murder that just happened?

A No, she didn't say to the detective that she saw what happened. It was Mrs. Isabel that said to him that both of us had seen what happened.

Q Over the years hasn't your brother had trouble with the police?

MS. SILVERMAN: Objection.

THE COURT: Yes, sustained.

MR. BASSIS: It goes to state of mind, your Honor.

THE COURT: Prior to 1971.

Q Before 1971 had your brother had any troubles with the law?

MS. SILVERMAN: Objection, your Honor.

78a

THE COURT: No, overruled.

A No.

Q Was he ever arrested for murder?

MS. SILVERMAN: When? Objection.

THE COURT: Yes.

Q At any time.

MS. SILVERMAN: Objection.

THE COURT: No, prior to the date of this.

Q Before this date-- strike it. I withdraw the question.

You testified that you were not worried that your brother was arrested that night or taken to the police, is that true?

MS. SILVERMAN: Objection. I don't undersatnd what night.

MR. BASSIS: The night of the murder.

MS. SILVERMAN: She didn't testify to that.

THE COURT: No, she didn't. I don't recall any such testimony. I think all she was asked was whether she had ever told Mr. Getz and his secretary that her brother had been taken into custody. That's my recollection of her testimony.

Q Weren't you mixed up or confused at the trial about the events of that night?

MS. SILVERMAN: Objection, your Honor.

THE COURT: I will permit it.

A No.

Q Isn't it true that you testified that you went outside your apartment at the time of the murder and that you were worried that your husband might be the victim?

A Yes.

Q And wasn't it true that your husband was actually home at the time of the murder?

A No, he was driving in the street, a taxi.

Q Were you asked these questions and did you give these answers, page 247:

"Q Now, I believe this morning you told us you were at home at the time of this incident with your sister and your children, is that correct?

"A Yes."

A Yes.

"Q Was there anybody else home at that time?

"A In my house?

"Q Yes, in your house.

"A Yes.

"Q Who else was home?

"A My husband."

80a

A There is an error there. My husband --

THE COURT: No. Did she give those answers to those questions?

A No, how could I state that? He was not in my home.

MS. SILVERMAN: Your Honor, Mr. Bassis only read part of that quotation. It continues.

THE COURT: All right.

Read the balance of it. You are entitled to.

MS. SILVERMAN: I think the answer that is relevant is "If I said that this morning I made a mistake, because that night my cousin's husband had been driving the car."

Q Were you asked that question and did you give that answer?

THE COURT: I don't see how that changes it. I think it confirms it.

MS. SILVERMAN: No, your Honor. In other words, her cousin's husband had been driving the car. That is what she says there.

THE COURT: The question was whether or not she was worried about her husband being the victim and she said no because he was up in the house.

MS. SILVERMAN: I think your Honor is right

and I stand corrected.

Q And did you give this answer to this question, page 250?

At the grand jury were you asked this question:

"Q What did you do after you heard this?"

And did you give the following answer:

"A I got scared because I have a cousin and a brother that came up the house to bring keys to the cab to my husband."

A No, I only told them that I was scared because my cousin's husband had been driving the car and my brother used to come to my house to visit sometimes.

You mean that that night my cousin was going to bring the keys to my husband?

THE COURT: No, is that the answer that you gave on the trial?

THE WITNESS: Yes. My only fear was my husband, that he was driving out that night.

Q Then she is saying she did not give this answer?

A What answer are you saying that I gave?

MR. BASSIS: I think I will drop it.

THE COURT: All right.

Will Ms. Silverman concede that that is a true reading of the transcript?

82a

MS. SILVERMAN: I didn't follow that closely, your Honor.

THE COURT: You should be.

MS. SILVERMAN: I was, I was trying to, but I presume--

THE COURT: Take a look and see whether that is the answer.

Will you concede that is what is in the transcript?

MS. SILVERMAN: I concede that Mr. Bassis reads truthfully from the transcript. I have no reason to disbelieve that.

THE COURT: Very well.

Q Do you remember the conversation with Mr. Getz at your house a week before the trial?

A That if I remember? I don't remember.

Q So you don't remember that conversation?

A The only thing that I remember is that he asked me about what I had seen. The same thing that I answered to Detective Getz I also answered to him.

MS. SILVERMAN: I think that is in error.

Did she say --

THE COURT: Just a minute.

A Detective Hughes.

83a

MR. BASSIS: Thank you.

That's all.

THE COURT: Anything further?

MS. SILVERMAN: No, I have no questions.

THE COURT: This witness is not going to go away. I want this witness back at 2:00 o'clock.

MS. SILVERMAN: Whatever you say, your Honor.

THE COURT: We will adjourn for lunch and resume here at 2:00 o'clock.

MS. SILVERMAN: I understand Myrna Crespo is outside.

THE COURT: You make her available.

MS. SILVERMAN: She is outside, your Honor.

THE COURT: You will talk to her, Mr. Bassis, during the recess.

MR. BASSIS: Yes.

(Luncheon recess)

84a

AFTERNOON SESSION

2:15 p.m.

MS. SILVERMAN: Your Honor, the two Crespo girls have not yet returned from lunch. Detective Hughes went downstairs to see where they are. I am just waiting for him to come upstairs. I don't know where they went to, unless they got lost.

THE COURT: Let me suggest this: We have not reached the vital issue which I believe is involved in this hearing and which I think is probably the basis for the action of the Court of Appeals in vacating their affirmance and affording the Attorney General an opportunity to make the application to me for a hearing.

I frankly feel that the papers submitted on this motion are completely inadequate. Nonetheless, we have gone ahead with the hearing to do what I believe is the intent of the Court of Appeals, namely, to ascertain whether or not there was any reason to attack the credibility of Miss Crespo or Mrs. Crespo, Mildred Crespo, whose cross-examination I held to have been improperly, under the provisions of Davis v. Lasker, curtailed.

The sole issue that I can see that we have here is whether there is any newly discovered evidence to indicate her state of mind to show whether or not she may

85a

have had an interest in connection with her brother's possible involvement in the murder of the deceased.

So I will permit Miss Crespo to be recalled and suggest, Ms. Silverman, that you address such questions as you deem appropriate on that topic.

MS. SILVERMAN: Thank you, your Honor, because I was going to ask just now if I could recall her and ask a few more questions as to state of mind.

THE COURT: There was absolutely nothing on your direct examination of her which in any way touched upon what I consider to be the vital issue in this case.

MS. SILVERMAN: I do agree it is an issue, your Honor, and I do agree that I did not touch upon it.

THE COURT: All right.

(Pause)

MS. SILVERMAN: I have Mildred Crespo. The other girl is outside.

THE COURT: All right.

M I L D R E D C R E S P O, resumed, and testified further through the interpreter:

FURTHER DIRECT EXAMINATION

BY MS. SILVERMAN:

Q Mrs. Crespo, between the time you observed this murder in the stairwell and the time you saw the

defendant again on the street from your fourth floor apartment did anyone tell you that your brother had been arrested for the murder?

A No.

Q Did anyone tell you that your brother was a suspect in the murder?

A No.

Q Did you see your brother in a police car during that period at any time?

A No.

Q Did you know during that period that your brother had been down to talk with Detective Hughes?

A Yes, they spoke, but I don't know of what.

Q Did you have any reason to believe at the time of the trial that your brother was ever a suspect in this case?

A No.

MS. SILVERMAN: I think I have no further questions, your Honor, at this time.

FURTHER CROSS-EXAMINATION

BY MR. BASSIS:

Q Is it your testimony that the detective never took your brother to the stationhouse the day of the murder?

87a

A No.

THE COURT: You better rephrase that.

Q When the detective spoke to your brother you don't know what was said, do you?

A No.

Q You don't know whether he asked your brother to come down to the stationhouse?

A No.

Q And you have no knowledge that he ever went down to the stationhouse that day?

A No.

MR. BASSIS: That's all.

BY THE COURT:

Q You never had any discussion with anybody as to whether or not your brother was considered to be involved in the murder?

A No.

Q To your knowledge, was your brother ever arrested in connection with this incident?

A No.

Q Do you know whether or not your brother was acquainted with Frankie?

A No, I don't know if they knew each other.

Q Was there any conversation between Detective

88a

Hughes and your sister in your presence about the question of your brother being a suspect?

A No.

Q As far as you were concerned, you never considered nor did you have any reason to believe that your brother was suspected or arrested in connection with the murder of the deceased?

A No.

THE COURT: Any further questions from either one of you?

MS. SILVERMAN: I have no questions, your Honor.

BY THE COURT:

Q Did you ever tell anyone at any time that you thought that your brother was a suspect in the murder?

A No.

Q Did you ever tell anyone at any time -- and all of my questions relate to prior to the time that you testified-- that you thought your brother had been arrested for this crime?

A No.

Q Just to be sure, all of the questions that I have addressed to you, not only the ones just now, but the ones previous, relate to the time before you testified.

A I don't understand the question.

Q Let me rephrase it.

The questions I asked you, I want to know whether they were your knowledge prior to the time you testified?

A What do you mean by "knowledge"? The same thing that I have said before in court?

Q Yes.

A Yes.

MR. BASSIS: Could I ask one question?

THE COURT: Yes, you may.

CROSS-EXAMINATION

BY MR. BASSIS:

Q Didn't you speak to Isabel Alvarez about the crime afterwards?

MS. SILVERMAN: After what, your Honor?

MR. BASSIS: After its commission.

THE COURT: Within a day or two.

A You mean after the crime --

Q Right.

A After the crime?

Q Did she speak to Isabel Alvarez about the murder after it occurred?

A No.

Q And she never told you that your brother was

in trouble about this case?

A No.

Q And you never discussed what had happened on the staircase with her?

A No.

MR. BASSIS: Thank you.

That's all, your Honor.

THE COURT: All right. You may step down.

(Witness excused)

THE COURT: Next witness.

MS. SILVERMAN: Myrna Crespo.

M Y R N A C R E S P O, called as a witness by the defendant, being first duly sworn, testified as follows:

MS. SILVERMAN: I believe Miss Crespo speaks English. May I just ask her?

THE COURT: You can ask her any questions you want, within reason.

DIRECT EXAMINATION

BY MS. SILVERMAN:

Q Are you comfortable to testify in English?

A Well, I try.

Q Are you currently employed?

A Right now? Yes.

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Q What do you do?

A Well, I am working part time in a personnel agency.

Q Do you also attend school?

A Yes.

Q What school do you attend?

A John Jay College.

Q What are you studying?

A Criminal justice.

Q Do you know a Mr. Getz?

A Yes.

Q Do you recall the trial of Efrain Santiago in February, I believe it was, of 1973?

A Yes, I recall part of it.

Q Either prior to that trial or during that trial did you ever speak to Mr. Getz?

A I spoke tohim once, yes.

Q When was that, if you recall?

A It was-- I think it was the time when the trial started, around that time. He went to my house once.

Q He came to your house?

A Right.

Q Did he come alone or with someone?

A No, with his secretary.

Q With his secretary?

A Right.

Q Was anybody else present?

A Yes, my sister was present.

Q Your sister was present?

A Yes, and I believe my brother, Custodio Crespo, was in the bathroom that time.

Q Did you speak with Mr. Getz in English?

A Yes. That time with trouble, but I did spoke English with him.

Q What did Mr. Getz ask you?

A Well, he didn't ask me anything. He just went and he wanted to speak to my brother. So I call my brother in the bathroom and I told that Mr. Getz wanted to talk to him. So he said that he got nothing to talk to him, so therefore he is not going to rush or nothing. I guess he was in a bad mood.

Then I went and knocked again and he came out and I remember Mr. Getz asking my brother whether he was arrested or detained to go to the police station in this particular case and mybrother said no.

That is what I recall.

Q Did Mr. Getz or his secretary ask you any questions?

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A Let me see. I am trying to recall.

Well, he was-- I know he went into-- since the lady that lived downstairs is the same door, it is in the same flight, right, so he trying to look in the hole, you know, the door hole.

Q Through your door hole?

A Right, to look through there. That's all he was doing. He wasn't asking me anything, not that I recall. That's what I recall.

Q Did Mr. Getz speak to your sister in your presence?

A No, I don't think so, not that I recall.

Q Did his secretary speak to your sister in your presence?

A No, I don't recall that, no. I don't think so.

Q Did you ever tell Mr. Getz or his secretary that your brother, Peewee Crespo, had been taken into custody by the policemen investigating the death and that you were aware of that fact prior to your giving any information to the Police Department? Did you tell Mr. Getz that?

A No, I never had.

Q Did you tell his secretary that?

A No. I never had.

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Q Did anyone ever tell you that your brother had been taken into custody?

A No.

Q Did you ever see your brother being taken away in a police car or in a police car?

A No.

Q When I ask these questions, I should preface it, I am talking of the time between the murder and the time that Efrain Santiago was arrested.

Did you ever see --

A No, not at all, no.

Q Did anyone ever tell you that your brother had been arrested?

A No.

MS. SILVERMAN: I have no further questions, your Honor.

CROSS-EXAMINATION

BY MR. BASSIS:

Q Do you remember the detective's first visit to your apartment after the murder?

A I remember that he was to my house, but exactly the day I don't remember, not the day or what year.

Q Who was there?

A My brother was there, my sister, and I.

Q This is right after the murder occurred, when the detective first came to your house.

Wasn't Alvarez there?

A Oh, you are talking about the detective.

I thought you said the lawyer.

Q No. I am sorry. I meant the detective.

A Yes, I was there, my sister was there and Ms. Alvarez was there.

Q Did you act as interpreter?

A Part of, kind of.

Q Didn't the police have his own interpreter?

A Yes, there was a Spanish detective there with Mr. Hughes. But they were talking and Ms. Alvarez was telling me, so I felt -- I guess she felt a little bit comfortable with me. So I was translating. But it wasn't the whole conversation, it was part of it only. It wasn't the whole thing.

Q But you heard the conversation, did you not?

A Well, if I was there, yes, I guess, part of it.

Q Did either you or your sister tell the policeman at that time that you had seen the murder?

A No, no, no, I didn't tell the police that I see the murder. At that time, no, I don't think so, no.

Q And your sister didn't either?

MS. SILVERMAN: Objection, your Honor. She wouldn't know whether her sister --

Q You were with the policeman the whole time he was there, weren't you?

A Yes, but it doesn't mean that I was in the conversation the whole time. I don't know. She probably did tell him. I don't know.

Q You didn't hear her tell him?

A Not that I recall, no.

Q When did you first give a description of the defendant to the police or of the man who did it to the police?

A Oh, after he was arrested.

Q At the time you saw the photographs?

A Right.

Q And that was days after the crime, right?

A I don't know how many days. I think two days. I don't remember.

Q You said that you saw the defendant down on the street a few days after the crime, is that correct?

A Yes.

Q Did you or your sister do anything at the time you saw him on the street?

A No. We was upstairs in the apartment, right, and I think my sister told somebody, I don't know who it was, she told somebody, and that person called the police.

Q Page 677, were you asked these questions at the trial and did you give these answers:

This is dealing with the time you saw the defendant on the street.

A Right.

Q That Saturday night.

"Q Then what if anything did you do after you saw that man who allegedly committed the crime in the street when you saw him in the street?

"A I called my sister and told her.

"Q You told her?

"A Yeah.

"Q Did you do anything to contact the Police Department?

"A No, not me.

"Q Did your sister contact the police?

"A No."

MS. SILVERMAN: Your Honor, that is not inconsistent. She did not say her sister contacted the police.

THE COURT: Overruled.

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Q Do you recall this testimony?

A Well, that's so many years back, it is hard to remember that. But I don't -- no, I don't recall that very well. I don't know.

Q So your memory of some of these details is sort of fuzzy?

A Right.

Q It was a long time ago.

MR. SILVERMAN: Objection.

THE COURT: No, overruled.

Q Even your recollection of the interview with Mr. Getz is rather vague, isn't it, at this late date?

A Well, I spoke tohim person to person in my house, so I recall that, I can recall that, because he was there in my house.

I saw him in the street and that time I didn't know -- I don't recall what happened. I know he was arrested and the police came the following day with some pictures.

Q When Alvarez was up in your house right after the murder weren't you speaking to her about the crime that had just happened on the staircase?

A Well, you see, she was very nervous, she was expecting a baby, and I was making some coffee and trying

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to calm her down, because she was screaming, she was very excited about it. We probably talked part of, but not -- I don't know. Probably we talk about it. Sure, because that was the whole thing in that time. She was very excited because of what happened. My sister was very excited. Even the kids were very excited, they were crying and everything.

Q Was your sister also talking to Alvarez at the time, trying to calm her down?

A Yes.

Q So all three of you were just talking about the murder that just happened outside?

A Probably not in details.

Q Just generally?

A Just generally talking about it.

MR. BASSIS: Thank you very much.

MS. SILVERMAN: I have no questions, your Honor.

THE COURT: All right.

You may step down.

(Witness excused)

MS. SILVERMAN: Your Honor, I have no further witnesses.

THE COURT: Very well.

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MS. SILVERMAN: Do you want the young ladies and Detective Hughes to remain?

THE COURT: Yes.

MS. SILVERMAN: Let me just tell them.

(Pause)

MS. SILVERMAN: Could I ask her one question, your Honor?

THE COURT: Yes.

MS. SILVERMAN: You want to take the stand a second?

M Y R N A C R E S P O, resumed:

REDIRECT EXAMINATION

BY MS. SILVERMAN:

Q Is your brother in New York City now?

A No, he is in Puerto Rico.

MS.SILVERMAN: Thank you.

Q Do you expect him to return within the near future?

A I don't think so. He is working there.

MS. SILVERMAN: Thank you.

I have no further questions.

THE COURT: All right.

(Witness excused)

H O W A R D I. G E T Z, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BASSIS:

Q Mr. Getz, you represented Mr. Santiago at his murder trial, correct?

A Yes, I did.

Q Do you remember in the course of your investigation your visit to the Crespo sisters' apartment on February 15, 1973?

A Yes, I do.

Q Could you describe who you spoke to during that visit and what you learned?

A I went with the young lady who worked in my office. Her name is Carmen Simeonides.

We went to an address which was the building in which the alleged crime was committed. I went to see the Crespo sisters and a person at that time known to me as Peewee Crespo, who I believe his real name is Peter Crespo, and we also went to see Isabel Alvarez and the superintendent of the apartment in which Isabel Alvarez had resided, for the purposes of just determining what the people looked like.

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I don't remember whether we saw Isabel Alvarez that evening or not, but we did see the Crespo sisters and we saw the person known to me as Peewee Crespo. It was in the living room.

One of the girls spoke Spanish and Mrs. Simeonides interpreted for me, the other girl spoke English, and I sat in the living room, I sat on the couch, and I asked them what they saw on the evening or early morning hours of the day of the event, and I had been informed previously-

MS. SILVERMAN: Objection, move to strike that.

THE COURT: No, I will permit it.

A I had been informed previously by Isabel Alvarez, I believe-- I believe, I am not sure of the source of the information -- that Peewee Crespo had been either arrested, taken into custody, or asked questions about the homicide in which Mr. Santiago was the defendant, and this event was some 13 months after the alleged crime was committed, and I was informed by the two sisters that their brother had been -- and I can't use the proper words, because I don't know the terminology-- was either taken into custody, asked questions --

MS. SILVERMAN: Your Honor, I move to strike

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this, because he isn't identifying which sister.

THE COURT: He was told by the two sisters, he said.

MS. SILVERMAN: But only one sister spoke --

THE COURT: He says he was told by the two sisters. You want to cross-examine him, you can cross-examine him.

A I was told by the two sisters. One was translated to me, the other one spoke to me in English.

It so happens that Peewee Crespo was home. He was in the bathroom. I believe they said he was taking a shower. He came out, he was in a tee shirt, and I spoke with him, and he told me he had- I believe I asked him if he was arrested.

He said, "No," he wasn't arrested, but he was taken into the police station or asked to come to the police station and asked questions about this particular homicide.

We then spoke to the Crespo sisters again at the same time with relation to when they first told anybody that they identified somebody by the name of Frankie and what the background of that was and they told me that was after Peewee had come home and Peewee had not come home that night at all, the night of the homicide.

Q Did you not in fact learn from Alvarez --

MS. SILVERMAN: Objection, leading.

THE COURT: Yes.

Q Did the fact of the arrest come out at the Wade hearing?

MS. SILVERMAN: Objection.

THE COURT: Sustained.

Q At what other time did you learn or hear of the arrest of Pete Crespo?

MS. SILVERMAN: Objection. There is no testimony that he was arrested.

THE COURT: There hasn't been any.

Q At trial can you describe--

THE COURT: My recollection of the testimony here is that Peewee said he had not been arrested, but had been taken to the stationhouse and asked questions about the homicide.

Is that your recollection?

Isn't that what you said?

THE WITNESS: Yes, sir, that's what I said. But that was at the time I interviewed him 13 months later.

THE COURT: That is correct.

Q Can you describe your relationship with

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Mr. Santiago, as to how you came to represent him and how you fared with him at the trial?

MS. SILVERMAN: Objection.

THE COURT: Yes, sustained.

MR. BASSIS: Your Honor, this goes to the lawyer's motive in the case to possibly testify falsely, the fact that he is not a personal friend.

THE COURT: I don't think it goes to that at all.

You represented him?

THE WITNESS: Well, Judge, truthfully, Mr. Israel of my office represented him, and what had happened was Mr. Israel was unable to try the case. So Judge Kappelman, who the case was before, assigned me to try the case.

Before that time we had both spoken to the defendant, but it was an assigned case under 18(b) of the County law. I was not paid by the defendant. I think that is what he is trying to bring out, Judge.

THE COURT: I think it is irrelevant.

Q How were your relations with the defendant?

MS. SILVERMAN: Objection.

THE COURT: Sustained.

MR. BASSIS: No further questions.

CROSS-EXAMINATION

BY MS. SILVERMAN:

Q Did you speak to Mildred Crespo through your interpreter, is that right, through your secretary?

A Is Mildred Crespo the young lady who speaks Spanish or speaks English?

Q Yes.

A She speaks Spanish?

Q Yes.

A Only?

Yes, I spoke with her through Mrs. Simeonides.

MS. SILVERMAN: I have no further questions, your Honor.

BY THE COURT:

Q You were never told anything by the two sisters with respect to whether or not they had seen or known whether their brother was under arrest or was considered as a suspect in this murder, this homicide?

A Judge, I can only answer the question this way: They told me that at the time they spoke to some police officer and said they had any knowledge about this case at all for the first time, at that time they were aware of the fact that their brother had been questioned, taken into custody or arrested.

I can't use the words, Judge. It is four, five years ago and I don't remember the exact words that she used.

Q You said on direct examination that Peewee said he had not been arrested, he had been taken to the stationhouse or had gone to the stationhouse-- you don't know whether he was taken or he had gone-- just to be asked questions routinely with respect to what he knew about the events of that evening, is that correct?

A From my own personal knowledge? No, I don't have any personal knowledge.

Q What did he say? Did he tell you he had gone there to be asked questions about the events of the evening?

A He said he was asked direct questions about the homicide and he described the person --

MS. SILVERMAN: I am going to object to this, your Honor. It is hearsay.

THE COURT: Overruled.

A He described the person that they had described to him as the person who committed the homicide, and in my opinion the both of them look very much alike, Peewee Crespo and the defendant, at the time. He doesn't look the same way he looks now.

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Q You have no recollection now of being told by Mildred that she was aware that her brother was considered as a suspect in this matter?

A Judge, my impression was that --

Q Were you told by her in any way?

A I was told by her, but I can't give you the wording. I was told by her that her brother was taken in and questioned about it, asked to come in or arrested. I don't remember the words.

Secondly, it was translated by someone and I don't know what interpretation was put on it from Spanish to English.

THE COURT: All right. Very well. You may step down.

(Witness excused)

C A R M E N S I M E O N I D E S, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BASSIS:

Q Mrs. Simeonides, you work for Mr. Getz?

A Yes.

Q Do you remember helping him on an investigation in the case of Efrain Santiago?

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A Yes.

Q Can you describe your visit to the Crespo sisters' apartment in February of 1973, tell us who you spoke to?

MS. SILVERMAN: Objection, your Honor. She didn't say she went there.

THE COURT: You were there, were you not?

THE WITNESS: Yes, I was.

Q You went to the Crespo sisters' apartment?

A Yes.

Q Who did you speak to in that apartment?

A We spoke to the Crespo sisters and Mr. Getz spoke to their brother. He was present in the apartment. There were a few other people in the apartment.

Q Did you learn anything about something that happened to Pete Crespo, Peewee Crespo, the night of the murder, but before the sisters came forward as witnesses?

MS. SILVERMAN: Objection.

THE COURT: No, I will permit it.

A Yes. During the conversation with the Crespo sisters Mr. Getz had asked them or they volunteered -- I am sorry -- they told Mr. Getz that their brother had been present at the police station in connection with the

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homicide that we were investigating.

Q Did they tell whether they thought he was a suspect at that time?

A Yes.

Q And that was before they told the police that they had seen the murder?

MS. SILVERMAN: Objection. He is leading the witness.

THE COURT: Did Mildred say anything with respect to this? Do you know one from the other?

THE WITNESS: Do I know one of the sisters from the other?

THE COURT: Yes.

THE WITNESS: I think I do, yes.

THE COURT: One of them did not speak English?

THE WITNESS: Myrna I believe is the one that does not speak English. As a matter of fact, Mildred at thetime did not speak English too well. She was going to college at the time and she didn't speak -- she spoke English, but not --

THE COURT: That's Myrna?

THE WITNESS: Yes.

THE COURT: How was Mildred's speech?

THE WITNESS: One of them-- Myrna did not

speak English. Mildred was the one that spoke English.

Q Are you sure you have it correct?

Do you remember which one went to Hostos? Which one was going to college?

A One was going to Hostos Community College.

Q Which one was that, do you remember the name of that one?

A I believe it is Myrna.

Q And how is her English?

A Her English-- you know, her English was fairly good, but not good with respect to legal terms that Mr. Getz was asking her.

Q And how about the other sister?

A She didn't speak English at all.

Q What did Pete Crespo, Peewee Crespo, the brother, tell you about the night of the murder?

MS. SILVERMAN: Objection, your Honor.

Did she speak with him?

THE COURT: Overruled.

MR. BASSIS: She said she spoke to him.

A Peewee-- Mr. Getz asked Pete, Peewee, whatever his name was, Crespo, whether or not he had spoken to the police about the homicide.

Q And what did he say?

A He said that he had been questioned by the detectives on it.

Q And that was before his sisters had come forward as witnesses?

MS. SILVERMAN: Objection.

THE COURT: Yes, sustained.

You don't know--

THE WITNESS: I don't know, you know, with respect to the time, whether it was before or after.

Q But it was the night of the homicide? Or do you remember when it was that Peewee was brought into the stationhouse?

A It was, from what I recall--

MS. SILVERMAN: Objection.

THE COURT: Yes, sustained.

What conversation did you have with him?

THE WITNESS: With Mr. Crespo?

THE COURT: Yes.

THE WITNESS: Mr. Getz asked him if he had been questioned or had gone to the police station with respect to the homicide.

THE COURT: And what did he say?

THE WITNSES: He said yes, that he had been at the police station.

THE COURT: Were they speaking in English?

THE WITNESS: He spoke in Spanish.

THE COURT: Were the two sisters there at that time?

THE WITNESS: Yes, the two sisters were present at the time.

MR. BASSIS: That's all. Thank you.

THE COURT: Anything further?

CROSS-EXAMINATION

BY MS. SILVERMAN:

Q Did you take any notes of this interview?

A Yes, we did.

Q Of this particular evening?

A Yes. We keep notes on all the interviews, yes.

Q Do you have the notes with you?

A No, I don't have the notes.

MR. BASSIS: Objection. Her notes we are speaking of?

THE COURT: Yes.

MR. BASSIS: Your personal notes?

THE WITNESS: My personal notes? No, I didn't keep any notes, because Mr. Getz was making notes.

Q Do you know if Mr. Getz has his notes?

A I don't know.

MR. BASSIS: Objection.

THE COURT: Did you ever see the notes?

THE WITNESS: Yes.

THE COURT: When was the last time you saw them?

THE WITNESS: Back in 1973, when he tried the case.

THE COURT: And you didn't look at them before you came here to testify?

THE WITNESS: No. I went through the file and looked at my affidavit, but I didn't look at the notes.

Q Who prepared this? Did you sign this affidavit?

THE COURT: Mark it for identification.

xx (Respondent's Exhibit 2 marked for identification)

Q Is this your signature on this affidavit?

A Yes.

Q Did you write this affidavit yourself?

A Did I write it?

Q Yes, did you prepare it?

A I probably did, yes.

Q This is your words?

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A Yes.

THE COURT: It is her signature on it.

MS. SILVERMAN: I didn't mean that. I meant did she draft it.

THE COURT: It is her signature on it.

Q You did?

A Yes.

MS. SILVERMAN: Your Honor, I have no further questions.

THE COURT: Nothing further from this witness?

All right. You may step down.

(Witness excused)

MR. BASSIS: We have no further witnesses.

THE COURT: Anything further?

MS. SILVERMAN: No.

THE COURT: We will take a short recess.

MS. SILVERMAN: Do you want everybody to remain, your Honor?

THE COURT: Yes.

(Recess)

N E I L H U G H E S, recalled as a witness by the Court, having previously been sworn, testified further as follows:

EXAMINATION BY

THE COURT:

Q Detective Hughes, you know that you are still under oath?

A Yes, sir.

Q Did you ever have any conversation with Mildred that her brother was or was not considered a suspect in connection with the murder?

A No, your Honor.

Q You had no conversation one way or the other?

A No, your Honor.

Q You never informed her that he was not a suspect?

A He was never a suspect as far as I was con - cerned.

Q Did you ever make it known to her thathe was not a suspect?

A Not that I can remember.

Q Was she in the room when you first spoke to her brother and Bennie Perez

I think you indicated that you first spoke to them in either Isabel Alvarez' apartment or in the Crespo sisters' apartment.

A Right. I think the first time I saw them was

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in Isabel Alvarez' apartment. But when I did-- the talking to them mostly was over in the 42nd squad office.

Q Did you have any conversation with Mildred Crespo as to the reason why you wanted her brother to come down to the stationhouse?

A No, your Honor. I had asked them to come with me, I wanted to speak to them over the stationhouse. I never mentioned to Mildred why they were going to the stationhouse, no.

Q I want to know as to why Pete was going to the stationhouse.

A It would be the same reason. I wouldn't tell anybody why.

Q You wouldn't say anything?

A No, I wouldn't.

Q You indicated that you were aware that Pete Crespo knew Frankie?

A I was aware that Benjamin Perez knew Frankie. As far as whether Peter Crespo knew him, I don't recall, your Honor.

THE COURT: All right.

Either one of you have any questions?

MS. SILVERMAN: I have no questions, your Honor.

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CROSS-EXAMINATION

BY MR. BASSIS:

Q Officer, didn't you state in your affidavit that the reason you took Pete Crespo down to the stationhouse was specifically because he knew Frankie?

A No, I -- if I may look at the affidavit.

I know I took Benjamin Perez to the stationhouse because he knew Frankie.

But Peter Crespo and Benjamin Perez were friends, they were tight.

Q You say here "The assailant's name was Frankie and he was known around the neighborhood. Because of this I asked hte help of Custodio Crespo Benjamin Perez, who I learned both knew Frankie."

That is your affidavit.

A Well, there is a possibility that Custodio Crespo knew Frankie, a possibility. I don't know. I know Benjamin Perez knew him and I knew Benjamin Perez and Custodio Crespo were friends and therefore possibly might know the same person.

Q And you testified earlier that you did not even know that the suspect was named Frankie until after you had called both of them down to the stationhouse, did you not?

A No, I did not. No. I had said that I had gotten the name Frankie from Isabel Alvarez earlier. That was Friday afternoon. I had spoke to them after that.

Q I have a different recollection of your testimony. It is on the record.

A Yes.

MR. BASSIS: That's all, your Honor.

THE COURT: All right. Thank you, Detective.

THE WITNESS: Thank you, your Honor.

(Witness excused)

THE COURT: I want Mildred Crespo back on the stand.

M I L D R E D C R E S P O, recalled by the Court, having previously been sworn, testified further as follows; through the interpreter:

EXAMINATION BY

THE COURT:

Q You are still under oath. You understand that?

A Yes.

Q I want to ask you a few more questions.

Do you know when Detective Hughes first spoke with your brother?

A I don't know when it was. I don't remember.

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Q Was it the morning following the murder?

A I don't recall.

Q Were you present --

A No.

Q Were you present at any time when the detective did speak to your brother?

A No.

Q Did Detective Hughes ever tell you anything with respect to your brother's position, situation?

A No.

Q Did he say anything with respect to Bennie Perez?

A No.

Q You talked to Isabel Alvarez.

When did you first talk to her, that very night, just shortly after?

A You mean for the first time regarding live?

Q For the first time regarding the murder.

A Yes, the same night.

Q Where was it that you talked with her?

A She came up to my house and she asked me for coffee, because she was very, very nervous.

Q Did you talk about your brother at all at that time?

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A No.

Q She left your house some time later that night?

A Yes, some time later she went down to her apartment.

Q When did you next see her?

A The following day.

Q That would be the same morning or the following morning or afternoon?

A It was on the same day, in the morning.

Q Did you talk about your brother at all with her at that time?

A No. She only came up to leave her kid with me, because she was going to the washing machine.

Q Did you talk to her after that about the incident?

A No.

Q Did she ever talk to you about any connection that your brother Pete might have had with this matter?

A No, never.

Q Did anybody ever tell you that Frankie was a suspect in the murder or had something to do with the murder?

A To tell me? No.

Q You never heard anybody mention it?

A No.

Q Did anyone ever tell you that your brother was not considered to have committed the murder?

A No.

THE COURT: All right.

Does either one of you have any further questions?

MS. SILVERMAN: I have no questions, your Honor.

MR. BASSIS: No.

BY THE COURT:

Q You knew your brother went down to the stationhouse?

A If he went?

Q Yes.

A I don't remember if he went or not.

Q Did he ever talk to you about his going down to the stationhouse?

A No, he would never talk to me about his problems.

Q Did your sister talk to you about his problems?

A Which problems?

Q Any kind of problems that he might have had.

A No, he would never tell us --

Q I want to know whether your sister told you.

A No.

Q Your sister never told you that he went down to the stationhouse?

A No.

Q Did Isabel Alvarez ever talk to you about whether your brother went down to the stationhouse?

A No.

Q Then your brother never told you whether he was cooperating with the police or not?

A No.

THE COURT: All right.

Anybody have any further questions of this witness?

MR. BASSIS: No.

MS. SILVERMAN: Nothing, your Honor.

THE COURT: All right. Step down.

(Witness excused)

THE COURT: Anything further from eitherone of you?

MS. SILVERMAN: I have nothing further, your Honor.

MR. BASSIS: No, your Honor.

THE COURT: All right.

Reserve decision.

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I don't know that there is any need to brief this.

MS. SILVERMAN: I won't brief it, unless your Honor feels he would like me to.

MR. BASSIS: Yes, I think I would like to submit a brief.

THE COURT: How soon can you have it to me?

MR. BASSIS: I have to order the minutes. I don't know how soon I would get that.

It is a strange context for us to do a brief alone, since we are not the moving party here.

THE COURT: If you don't --

MR. BASSIS: OK, I will do it.

MS. SILVERMAN: When would he be filing the brief?

THE COURT: I don't know.

MS. SILVERMAN: Because I am going to be out of my office in July.

THE COURT: Sometimes we can't help but be back in our office.

MS. SILVERMAN: If I have to, of course, I will, your Honor.

THE COURT: I will let you know by Monday whether or not I want briefs.

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MS. SILVERMAN: If Mr. Bassis files a brief then I will file a brief. I didn't intend to, but I feel if he puts in a brief I may have to reply to it.

So if he puts in one I would request permission to put in a reply to it.

THE COURT: No, if you are going to put in a brief I want you to both get a brief to me on the same day.

If you are going to order daily copy I will expect a brief in my chambers by next Friday.

MS. SILVERMAN: If Mr. Bassis files a brief I probably will then, your Honor.

That is up to me, I know.

THE COURT: All right.

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WITNESS INDEX

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Neil Hughes	10	18	47	53
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UNITED STATES OF AMERICA ex rel EFRAIN SANTIAGO,

Plaintiff,

v. 75 Civ.3225

LEON VINCENT, Superintendent of Greenhaven Correctional Facility,

Defendant.

- x

New York, New York
June 29, 1977
1:45 p.m.

(Hearing resumed)

J.Gagliardi

G L A D Y S M A T O S, was duly sworn as the interpreter.

THE COURT: All right, call the wintess.

MS. SILVERMAN: Your Honor, I will call Mrs. Alvarez to the stand.

THE COURT: Very well.

I S A B E L A L V A R E Z, called as a witness by the defendant, being first duly sworn, testified as follows, through the interpreter:

THE COURT: Proceed.

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DIRECT EXAMINATION

BY MS. SILVERMAN:

Q Mrs. Alvarez, do you remember a murder that took place in December 1971 at Melrose Avenue?

A Yes.

Q Did you see that murder?

A Yes.

Q Did there come a time after the murder that policemen arrived at her apartment house?

A Yes.

Q What time did they arrive?

A It was early morning. I don't remember the time.

Q Where was she when the police arrived?

A In my apartment.

Q Did she stay in her apartment that whole morning?

A Yes.

Q Did she see the Crespo sisters that evening?

A Yes.

Q Where did she see them?

A In their apartment.

Q Was that right after the murder?

A When the police arrived, that's when we went up.

Q Does she remember the name of the policemen that came?

A No, I don't remember the name.

Q How many policemen came?

A There were a lot of them, and there were detectives also.

Q Did she speak to anyone?

A Of the police?

Q Yes.

A Yes.

Q Did she speak to them in Spanish or English?

A They brought a Spanish-speaking one.

Q And what did she tell the police?

A I told them what had happened, about the death.

Q Did she say anything about the man she had seen?

A Yes.

Q What did she say?

A Well, I told them that I was in the tub taking a bath, I was pregnant, and I heard some noises, I went out to take a peek through the peekhole, and I saw that he grab him here, he grab him here, and he said to give him what he had, otherwise he was going to kill him.

Then he grabbed him and he stabbed him right here.

Q Did she describe the physical appearance of the man she had seen to the police?

MR. BASSIS: Your Honor, I object. I think this is rather irrelevant, retrying the whole murder case.

THE COURT: Yes. I don't think that is the issue.

Q Who else was present when she described the murder she had seen and the events to the policemen?

A When I call out the window, that's when the sisters came down, the Crespo sisters, came down.

Q When did she next see any policemen?

A They kept investigating to see what was going on, what had happened.

Q When did they come again or when did someone come again?

A They would come every day.

Q Did someone come to talk to her the same day, but later in the day, after the murder?

A Of the police? Yes.

Q What time?

A I don't remember. I don't remember the time well. I knew it was early in the morning, but I don't remember the time.

Q Did she speak to the policemen at this time?

MR. BASSIS: I object. I think this is all irrelevant.

THE COURT: Yes, I do, too.

MS. SILVERMAN: I don't see how it is irrelevant.

THE COURT: I am saying it is.

MS. SILVERMAN: May I be heard, your Honor?

THE COURT: No, I don't believe it is necessary.

MS. SILVERMAN: I think there is some argument here -- well, all right.

Let me just go on.

Q After you spoke with the policemen where did they go?

A They went up to the Crespo sisters' house.

Q Did she see the policemen again that day?

MR. BASSIS: Objection, your Honor.

THE COURT: No, I will permit it.

A Yes, in the morning they returned.

Q What day is she talking about?

A The following day.

Q When she says the following day, do you mean the day of the murder,but later in the morning, or the

following day?

A Yes.

Q Did she see the policemen the following full day after the day of the murder?

A Yes, in the morning they came.

Q Does she know a Peewee Crespo?

A Yes, they live in the apartment above me.

Q What is her husband's name?

A Benjamin Perez.

Q Did she see some time after the murder Peewee Crespo or her husband speaking to any policemen?

A No.

Q Did there come a time within the next few days that she did?

A No, not that either.

Q Did she ever see them speaking, the two of them -- let me rephrase that.

Did she ever see Mr. Crespo or her husband talk to the police in front of the apartment building?

MR. BASSIS: Objection, your Honor. There is no time.

THE COURT: I will permit it.

A No.

MS. SILVERMAN: At this time I have no further

questions.

THE COURT: Very well.

CROSS-EXAMINATION

BY MR. BASSIS:

Q Some time after you spoke to the police the first time your husband came home at 4:00 a.m., correct?

A Yes.

Q Who came home with him at that time?

A Crespo.

Q What is his whole name, Custodio?

A Custodio Crespo.

Q Did they tell you that they had been arrested by the police for the murder?

A Yes.

Q They told you that the police thought they had committed the murder?

MS. SILVERMAN: Objection.

THE COURT: Overruled.

A Yes.

Q Where did Peewee go after he left your apartment?

MS. SILVERMAN: Objection. There is no testimony he was in her apartment.

MR. BASSIS: She said they came home together.

THE COURT: Ask the question.

Where was it that your husband and Custodio Crespo saw you?

THE WITNESS: In my apartment.

Q And that was at 4:00 a.m.?

A Yes, when my husband returned.

Q And do you know where Peewee Crespo went when he left your apartment?

A He went to his sisters' house.

Q Did you talk to his sisters later that day?

A Yes, we talked every day. I knew them.

Q Did they know about the arrest of their brother?

THE COURT: Did you talk to them about the arrest of their brother?

THE WITNESS: Yes, we talked.

THE COURT: Did you tell Mildred that her brother had been arrested?

THE WITNESS: Yes.

Q Weren't they upset that their brother --

MS. SILVERMAN: Objection.

Q Were they upset that the police --

THE COURT: Sustained. You can't say "upset."

Q How did the police treat Peewee Crespo?

MS. SILVERMAN: Objection.

THE COURT: Sustained.

Q Did the sisters tell you how the police treated their brother?

MS. SILVERMAN: Objection.

THE COURT: Let's get to Mildred.

Q Did Mildred tell you how the police treated her brother?

A Yes, they had beaten him. They had beaten them both.

MR. BASSIS: Thank you, your Honor.

That's all.

THE COURT: All right.

REDIRECT EXAMINATION

BY MS. SILVERMAN:

Q You stated that the evening of the murder -- withdraw that.

You stated that after the murder you went up to the Crespo sisters' apartment, is that right?

A Yes.

Q What time did you go back to your apartment?

A I came down right away.

Q Was anyone home when you came down?

A No, I was by myself.

Q Did her husband come home that night?

A Yes.

Q Was he alone or with someone?

MR. BASSIS: Objection, your Honor. We have been through all this testimony.

THE COURT: Yes.

MS. SILVERMAN: Your Honor, I feel this is crucial to my case.

THE COURT: It may very well be.

Next question.

Q Did your husband come home that evening?

MR. BASSIS: Objection, your Honor.

THE COURT: I will permit it.

A Yes.

Q Was he alone or with someone?

A He came with his friend and his friend went upstairs to his house and my husband stayed home with me.

Q Did your husband-- what did you tell your husband?

MR.BASSIS: Objection, your Honor.

THE COURT: Yes, sustained. It doesn't have anything to do with what we are involved in.

MS. SILVERMAN: I think it does, your Honor.

THE COURT: I don't think it does.

MS. SILVERMAN: I think there is a question of

chronology here and the chronology that Mr. Bassis is espousing is that it was at that point in time that Mr. Crespo and Mr. Perez told Mrs. Alvarez that he was arrested and I think I am entitled to explore that chronology on this cross-examination.

MR. BASSIS: Objection. This is not cross-examination.

MS. SILVERMAN: May I finish, Mr. Bassis?

I think that is the heart of the issue in this case. If I am not entitled to cross-examine her on that then I am denied any right to cross-examine at all.

MR. BASSIS: Objection, your Honor. It is the state's witness.

THE COURT: It doesn't make any difference.

MS. SILVERMAN: May I say this, your Honor. I put Mrs. Alvarez on the stand because your Honor asked her to be here today. I did that, but I did not call her --

THE COURT: I am saying it doesn't make a bit of difference. I will let you go ahead just for a short bit.

Q What did you tell your husband?

A What had happened in the building.

Q Did he indicate that he knew what had happened in the building?

A No, I had told him what had happened.

Q Did he know already?

A Yes, because I had told him.

Q After you spoke with your husband, did more policemen come right then and there?

A No.

Q You testified on cross-examination that your husband and Mr. Crespo had been arrested.

A Yes, they were arrested.

Q When were they arrested, Mrs. Alvarez?

A Two days later.

Q Two days later than what?

A Two days after the accident had occurred.

Q What accident?

THE COURT: The murder?

THE WITNESS: Yes, the murder.

Q Two days later. OK.

Did you see them arrested?

A No.

Q Did you ever see your husband and Mr. Crespo in front of your apartment house two days after the murder from your window?

MR. BASSIS: Objection, your Honor.

THE COURT: Yes, sustained.

Q You didn't see them arrested two days later?

THE COURT: It doesn't make any difference. The question is really whether or not she had told Mildred Crespo that he had been arrested.

MS. SILVERMAN: That may be true, your Honor, but I think when --

THE COURT: It doesn't make any difference really.

MS. SILVERMAN: I think it does, your Honor, because when she learned or when the arrest took place-- she couldn't tell them it took place until it actually happened. Now she is saying it is two days later.

THE COURT: She already testified in response to Mr. Bassis' question when she did.

MS. SILVERMAN: She did not, your Honor. She just said it was two days after the murder.

THE COURT: Will you please just ask your question.

Q Did you see your husband and Mr. Crespo talk to any of the policemen two days after the murder?

MR. BASSIS: Objection.

THE COURT: It has nothing to do with it.

MS. SILVERMAN: I spoke with Mrs. Alvarez--

THE COURT: I don't care whether you spoke. Please, Ms. Silverman.

MS. SILVERMAN: I feel that is a perfectly proper question, your Honor. There has been a claim here that these two men were arrested and she is the only person who testified at trial that there was such an arrest.

I think we should establish when it was and what she bases it on.

THE COURT: Very well.

Q Two days after the murder did you see your husband and Mr. Crespo speaking to any policemen --

MR. BASSIS: Objection, your Honor. We have been through all this.

Q -- in front of your building?

MR. BASSIS: It is irrelevant.

THE COURT: I will permit it.

A No.

MS. SILVERMAN: I have no further questions.

THE COURT: Anything further?

MR. BASSIS: I have one or two.

RECROSS-EXAMINATION

BY MR. BASSIS:

Q How many times did the police take the Crespo brother in for questioning about the murder?

A One time.

Q And that time was right after the murder?

A Yes.

Q And it was before your husband came home?

A No, they had taken them both, both.

Q But your husband told you at 4:00 a.m. that he and Crespo had been already questioned about the murder?

A No, they didn't tell me anything about that.

Q Your husband came home at 4:00 a.m., is that correct?

A Yes.

Q And Crespo was with him, is that correct?

A Yes.

Q And didn't they tell you that they had been questioned by the police?

A No.

Q Didn't you testify here that they had been arrested that night?

A No, they didn't arrest them that night.

Q You spoke to the sisters about their brother's arrest that same day, is that correct?

MS. SILVERMAN: What day?

MR. BASSIS: The 17th, Friday.

A Yes.

Q And the arrest was early that same morning?

MS. SILVERMAN: Objection, your Honor. It has been asked and answered several times.

THE COURT: I know it has.

MR. BASSIS: We have had several answers.

THE COURT: Yes, we have.

Q And their brother had been arrested earlier that morning?

A Around 11:00, something like that.

Q And that's when he was beaten, at 11:00 in the morning?

MS. SILVERMAN: Objection to this.

THE COURT: Overruled.

MR. BASSIS: That's all.

THE COURT: What was the answer?

THE WITNESS: Two days later. Two days later he was arrested at 11:00 o'clock in the morning and he had been beaten.

THE COURT: Anything further?

MS. SILVERMAN: Yes, your Honor.

REDIRECT EXAMINATION

BY MS. SILVERMAN:

Q You testified that he had been arrested at 11:00 o'clock in the morning two days later?

A Yes.

Q How do you know that, that it was 11:00 o'clock?

A Because they had said that they had been arrested at that time.

MS. SILVERMAN: No further questions, your Honor.

THE COURT: Anything further?

MR. BASSIS: No.

THE COURT: All right.

I understand that the other transcript is ready, this will be ready shortly, and you will submit briefs?

MS. SILVERMAN: Friday, your Honor.

THE COURT: All right.

...

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

United States of America ex rel Efrain Santiago,

Petitioner,

-v-

75 Civ. 3225

Leon Vincent, Sup't of Green Haven Correctional Facility,

Respondent.

New York, N. Y.

July 6, 1977

2 pm

Room 129

Before:

Hon. Lee F. Gagliardi,

District Judge.

A P P E A R A N C E S:

Legal Aid Society,
by Barry Bassis, Esq.,
Attorney for Petitioner.

Louis J. Lefkowitz, Esq.,
Attorney General of the State of New York;
Arlene Silverman, Esq.,
Assistant Attorney General,
of counsel.

- - -

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FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

Also present:

Gladys Matos, Spanish Interpreter.

THE CLERK: Will the interpreter please stand and raise your right hand.

(Whereupon the Spanish interpreter, Gladys Matos, was duly sworn by the clerk.

THE COURT: All right; as I understand it, this is an application by the petitioner here to call an additional witness; is that correct?

MR. BASSIS: Yes, your Honor, I call Benjamin Perez.

- - - -

B E N J A M I N P E R E Z, called as a witness by the petitioner, being first duly sworn, testified through the interpreter as follows:

THE COURT: Before we proceed any further, it is noted that the petitioner is not present. I did not receive any application for a writ. I do not think his presence is required or necessary.

MR. BASSIS: No, we did not think so because this will take just a few minutes, your Honor.

THE COURT: Very well.

MR. BASIS: Thank you.

DIRECT EXAMINATION

BY MR. BASSIS:

Q Mr. Perez, do you remember the murder that occurred at 827 Melrose Avenue at about midnight on Thursday, December 16, 1971?

A I wasn't present during the murder.

Q Right, but do you remember when that happened in the building?

MISS SILVERMAN: Objection.

THE COURT: No; overruled.

A Yes, I remember.

Q Did you speak to PeeWee Crespo that Friday morning?

MISS SILVERMAN: Objection; leading.

THE COURT: No, overruled.

A Yes, I had a conversation with this PeeWee Crespo, yes.

Q Can you tell me what he said to you?

MISS SILVERMAN: Objection; hearsay, your Honor.

THE COURT: Overruled.

A He told me that they had arrested him because of a death that had occurred in the building, and that they were looking for me, and I answered him that I had done nothing, why were they looking for me? And

he told me that they had interrogated him and that the police had beaten him, and they asked for me, and he told them that he knew me but that he didn't think that I was involved in these problems.

Q Did you speak to Mildred Crespo that same day?

MISS SILVERMAN: Objection.

THE COURT: Overruled.

A I didn't have a conversation with her; she had a conversation with me.

Q And what did she tell you at that time?

A Well, she told me that the police was looking for me for a death that had occurred in the building.

Q Did she tell you anything about her brother PeeWee?

MISS SILVERMAN: Objection.

THE COURT: Overruled.

A She told me that they had taken him.

Q Did she tell you what they did to him?

MISS SILVERMAN: Objection.

THE COURT: Overruled.

MISS SILVERMAN: It is hearsay, your Honor.

THE COURT: No; overruled.

A She told me that they had beaten him because they had told PeeWee what had happened to him.

Q Did she say whether they beat him because they suspected him of the murder?

MISS SILVERMAN: Objection as leading.

THE COURT: Yes, as to that; reframe the question, please.

Q Did she tell you why they beat him?

A They had beaten him because of what had taken place in the building--what took place in the building.

Q Did the police do anything to you that day?

MISS SILVERMAN: Objection.

THE COURT: Overruled.

A That day they arrested me and they took me in and they interrogated me, and they also hit me.

Q What kind of questions did they ask you?

A Why did I killed a certain Mr. Perez in that building, and I answered them and I told them that I had killed no one.

Q Did they ask about Isabel?

MISS SILVERMAN: Objection.

THE COURT: No, I will permit it.

A Well, yes, but what the detectives told

me was why did I and my wife did that.

Q Why did the police think that you did it?

MISS SILVERMAN: Objection.

THE COURT: Sustained.

Q Did the police tell you why they thought you and Isabel killed the man?

A Well, they told me that it was because of a robbery.

Q Do you remember which detective questioned you and beat you up?

A Well, I don't remember too well but I know that his name was Hughes--it was Hughes.

Q Do you know which--did PeeWee tell you which policeman beat him up?

MISS SILVERMAN: Objection.

THE COURT: No, I will permit it.

A In that moment he described the policeman to me, and I replied to him and I described the same man, and he said, "Yes, that's the way he looked like--that's him."

Q Is that Hughes--is that what you mean?

MISS SILVERMAN: Objection.

THE COURT: Yes; sustained.

MR. BASSIS: That is all; thank you.

THE COURT: This young lady is going to ask you some questions.

CROSS EXAMINATION

BY MISS SILVERMAN:

Q Mr. Perez, have you ever been convicted of a crime?

A I have had problems, not because of crimes but I have had problems. I have never had that type of a problem.

Q Isn't it a fact that you are now serving a conviction for a drug offense in the New York State Supreme Court?

A Yes, I am serving time now.

Q How much time?

A One to life. I am doing one to life, and when I went to the Parole Board they gave me another year.

Q Have you ever been convicted of any other crime?

A In '71--I don't remember whether it was '70 or '71, in Yonkers, New York they gave me three months I owed on parole.

Q What was the crime?

A They accused me of a stolen car, according to them, but there were four of us that were together

in that car. We were five days in jail. We came out under bail. They gave us an appointment, a day to return, and the only one to return was me, and I was the only one that they gave time to.

Q When did you first speak to Mr. Bassis about this case?

A Last week.

Q What day?

A Well, Friday--that is, Mr. Bassis and Mr. Williams, where I am registered in a program, and they made some questions about that death, and they gave me an appointment, and that's it.

Q What did Mr. Williams say to you?

A Well, on the questions that you are asking me now, more or less.

Q Well. what did he say specifically?

A If I remembered about a death a long time ago, and if I was present during the killing, and what had happened about that.

Q Did Mr. Williams or Mr. Bassis explain to you why you were coming here today?

A Yes, they explained it to me.

Q What did they explain to you?

A A lot of information.

THE COURT: Well, tell us what they said.

THE WITNESS: Well, I had a conversation. They asked me some questions about Mr. Santiago, about my wife, and Isabel Alvarez, about myself, and about Mr. Custodio Crespo.

Q What did they specifically ask you with respect to each of those people, then?

A If I knew something about that death and if I had gone to trial and if I was arrested and interrogated because of that death, and I explained to them and I told them the truth.

Q Did they ask you about Custodio Crespo?

A Yes, they asked me.

Q What did they specifically ask you about him?

A Well, they asked me if Crespo was the brother of Ileana and Mildred, and about the death.

Q And what about Detective Hughes--anything about Detective Hughes?

A He interrogated me, and as I explained previously, and they investigated about that death, and I said that I had not done anything wrong, I had not committed a crime.

Q You testified that you explained to Custodio Crespo the appearance of Detective Hughes; is that

right?

A Yes.

Q How did he appear?

A He was white; blue eyes; husky. He was about six feet tall, I think.

Q Have you spoken to Isabel Alvarez within the past three or four days?

A No, I called here today and I explained that I had an appointment today.

Q Where were you on the night of the murder?

MR. BASSIS: Objection, your Honor; I think it is irrelevant.

THE COURT: It is irrelevant.

MISS SILVERMAN: I thought I would test his recollection, your Honor. He seems to have identified times and places with some particularity.

THE COURT: All right, there is no jury here, so I will permit it.

A I was at a friend's house with some relatives.

Q And what time did you come home?

A I returned early in the morning, about 4 or 4:15, something like that.

Q And what did you do when you returned?

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A I went home. What was I to do?

Q Did you stay up or did you go to sleep?

A When I knocked on the door my wife opened the door, and she told me of what had happened.

Q Right. What did you do?

A About what?

Q Did you go to sleep? Did you stay up?

MR. BASSIS: Your Honor, I object. I do not see what these mundane details have to do with his recollection.

THE COURT: I will permit it.

A We spent a few moments talking, and I asked her and she told me she had been taking a bath when that had occurred.

Q And what did you do, though? Did you go to sleep after you spoke with her or did you stay up? What did you do?

A I went to bed. What was I to do?

Q What time did you go to bed?

A About 5 or a quarter to 5--something like that.

Q And what time did you get up?

A About 8 o'clock in the morning.

Q You slept 3 hours.

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A About 3 hours, yes, that is right.

Q And what did you do after you woke up?

A What was I to do? I stayed around there.

Q And did you stay home the whole day?

A No, then I went out to my relatives' house and I came back.

Q What time did you go to your relatives' house?

A I know by the time I went to my family's house and I returned it was before twelve o'clock.

Q And what did you do after twelve o'clock?

A Then I was arrested.

MISS SILVERMAN: I have no further questions, your Honor.

THE COURT: Anything further?

MR. BASSIS: Just one question.

REDIRECT EXAMINATION

BY MR. BASSIS:

Q Are you working now, Mr. Perez?

A I am right here at this moment.

Q No; do you have a job?

A Yes, I am working, sir.

Q What do you do?

A In a gas station.

MR. BASSIS: Okay; that is all. Thank you.

MISS SILVERMAN: I have one other question.

RECROSS EXAMINATION

BY MISS SILVERMAN:

Q Is your job that you are working on, is that a work-release program?

A Yes, it is.

Q And are you still serving time for the conviction you told us about when you got one to life?

THE COURT: He has another year to go.

MISS SILVERMAN: No, that doesn't mean--that means he meets the Parole Board in another year and then they consider it. It doesn't mean that he is released--just to keep the record straight.

I have no further questions.

THE COURT: Anything further?

MR. BASSIS: No.

MISS SILVERMAN: Except this, your Honor--it doesn't affect this particular witness.

THE COURT: All right, you may step down.

(Witness excused)

MISS SILVERMAN: Mr. Bassis has now introduced testimony about certain beatings that allegedly occurred somewhere around the time of this murder on Mr. Perez

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and on Mr. Crespo, and in view of that I would like to locate my witnesses and present some rebuttal--unless Mr. Bassis would be prepared to stipulate that they would testify--that the detectives would testify that they did not beat anybody.

THE COURT: Let me suggest this, I don't believe that that is the issue here. It is a question of what was reported and what the state of mind of Crespo was at the time.

MISS SILVERMAN: I agree.

THE COURT: Then there is no need to go into that testimony.

I suppose you would stipulate that Detective Hughes, if he were called to the stand, he would testify without conceding the truth of his testimony, that he did not beat anybody or see anybody beaten in connection with this matter.

MR. BASIS: Yes; I think this, there is an apparent contradiction between the witnesses on that testimony.

THE COURT: Does that satisfy you?

MISS SILVERMAN: It does, your Honor.

THE COURT: All right--hearing closed--finally?

MISS SILVERMAN: Yes.

THE COURT: Thank you.

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Barry Bassis
received 10/18/77 - 12:40 p.m.